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Regulatory Fascism—The Latest in Administrative Government

Fertile soil for this new development found in widespread criticism of utilities and economic stress leading to recurring demands for arbitrary rate reductions and attacks on courts and commissions refusing to yield to popular clamor.

BY FRANCIS X. WELCH

IN Rome, Italy, on March 25, 1934, was held one of the strangest elections of all time. On that day some 10,500,000 Italians marched to the polls and voted for a predetermined list of members of the Chamber of Deputies. On being elected this Chamber assembled and on April 28, 1934, voted themselves out of existence.

This is not called an election in Italy but a plebiscite. There were no rival tickets, no opposition speeches, no opposition newspaper editorials, no opposition parades or broadcasts. Election betting was *nil*. The list of deputies was prepared by the Fascist Syndicates or corporations of different classes of people. Not that it meant much, beside the honor of the thing—somewhat similar to being elected a member of the U. S. electoral college in presidential years. Even the list of these candidates whose perfunctory duties were so definitely predestined was subject to the absolute supervision of the Grand Council, which is just another name for Italy's man of the hour—Benito Mussolini.

The solemn vote of suicide taken by the Chamber on April 28th is the formal finish of Italy's attempt at real democratic government. It was the last Chamber of Deputies. In its place there arises the new Italian corporate state, dominated by the vibrant personality of *Il Duce*.

VERY similar to the Fascist policies are the Nazi policies of Herr Hitler in neighboring Germany. Strangely enough, although both Fascist and Communist would hotly deny it, another similar example is the proletarian dictatorship of Soviet Russia. The thought behind all these movements to substitute single national action for democratic deliberation is the theory that, in times of emergency at least, there can be no formal opposition tolerated. The government must act for the people in all matters and be subject to the people only to the extent of the confidence, in the régime as a whole, expressed at a national plebiscite. As to details of legislative or administrative policies, the people are not regarded as qualified to exercise judgment through referendum of election of representatives with legislative discretion.

Il Duce himself, scornful of democracy, has stated on repeated occasions that democracy is futile because the people's representatives talk and talk and talk and never get anything done. They stalemate one another's efforts and dissipate the energies of the people in sectional feuds instead of uniting them in a common cause of direct national action.

It sounds very fine and there is no doubt that it has worked wonders for Italy, so far. But somehow in America we have always preferred the occasional risk of doing things wrong or else not doing them at all, rather than to run the greater risk of suppressive abuse that would come from dictatorship run amuck. We have "sectional feuds" in a way, but we settle our differences, generally speaking, in a sporting way at the polls.

THE three branches of the government of the United States were theoretically designed to function independently and yet so coördinately in the general interest of the public as to preserve the integrity of all the rights and privileges guaranteed by the Constitution—in short, as the lawyers say, a government of "checks and balances." Emergency conditions, however, frequently require strong and unhesitating action. Thus, in time of war, many of the privileges of civil process are suspended. There is a tendency during such times to give more and more power to the executive branch at the expense of the legislative and judicial branches. The danger of this trend toward dictatorship is that there may not be a level head in the chair of dictator. A wise tyrant (using that word in its classical Greek sense) may be a savior of the country in its hour of dire distress, but a Hotspur armed with extraordinary power may plunge it to destruction far more quickly than a muddling, debating legislature or an ultra-conservative judiciary.

AN interesting view of this danger of the so-called "ardent" type of politician in high places was contained in the report of the British Lord Chancellor's "Committee on Minister's Powers," rendered April 4, 1932:

> Indeed, we think it is clear that bias from strong and sincere conviction as to public policy may operate as a more serious disqualification than pecuniary interest. No honest man acting in a judicial capacity allows himself to be influenced by pecuniary interest; if anything, the danger is likely to be that through fear of yielding to motives of self-interest he may unconsciously do an injustice to the party with which his pecuniary interest may appear to others to identify him. But the bias to which a public-spirited man is subjected if he adjudicates in any case in which he is interested on public grounds is more subtle and less easy for him to detect and resist.

In other words, the crafty politician is, generally speaking, less dangerous than the sincere but fanatical statesman. This is not by way of excusing political corruption, but the harm that a dishonest official does may be measured in dollars and cents. Once exposed, public wrath insists upon reform. The insidious thing about the political fanatic, on the other hand, is that the potential danger to the national welfare may be limitless.

LET us see what evidence there may be that the doctrine of Fascism is taking root in America. The field of public utility regulation seems to be fertile soil for such development. There has been widespread criticism of public utilities. Add to this the economic stress and demand for rate reductions and it is easily seen that politicians would seize upon such a popular issue as an aid to securing public office. Once elected on anti-utility promises, such officials find themselves faced with the necessity of making good on definite guaranties to reduce utility rates.

Governors of states in this position sometimes find their way blocked by state commissions who refused to order arbitrary reductions in the face of almost certain court reversal. This leaves it up to the governor either to dominate the commission or back down on his promise. A true politician prefers the "strong man" rôle.

Such was the case of Governor Talmadge of Georgia. Displeased because the former public service commission of that state refused to do his bidding, the governor literally "fired" the whole commission and substituted his own appointees with his specific instruction to lower utility rates or in turn be "fired" themselves. We have the governor's own word for this.

ON the day he appointed the new board, Governor Talmadge said that he knew "all of the appointees agree with my position that rates are too high in Georgia." This was before the new commissioners had heard any evidence or taken their oaths of office. The new commission fulfilled the governor's expectations or, perhaps more frankly, the governor's instructions. A series of rate reduction orders affecting electric, telephone, and carrier rates were handed down within a short period, but here a new obstacle loomed. With the exception of certain electric reductions voluntarily

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accepted, all but one of the larger utilities involved in these orders sought and obtained court orders restraining enforcement of the commission orders.

The governor rose to the occasion. He demanded first of all that the people defeat at the polls any judge who granted restraining orders to utilities resisting commission rate reductions. As to Federal judges he could only hope for early enactment by Congress of laws depriving the Federal courts of jurisdiction in such cases. Here is plain evidence of a state executive telling the judiciary how to decide cases, an executive who rides fearlessly over the traditional *quasi* legislative prerogatives of a regulatory commission, and the historic independent discretion of the judiciary.

Does this not smack of Fascism?

THERE is something to be said for this position, if one believes without reservation in the old Latin maxim, *"Vox populi est vox Dei."* Governor Talmadge justifies his position no doubt on the grounds that he is the people's choice for this term of office at least. He considers himself answerable to no one but the people and considers no tradition above the will of the people as expressed at the polls.

Regulating utilities by appealing to the people, however, is likely to prove difficult and, in the long run, unsuccessful. It is easy enough for Governor Talmadge and others to get votes to support a proposition for reducing rates, but does such a vote mean anything? Ask any group of voters at a popular election, "Do you favor a reduction in your telephone, electric, and gas bills?" and it will be a strange electorate, indeed, that returns a majority vote "No!" We all vote to help our own pocketbook. But it is something like having the customers at a restaurant vote on whether or not they want to pay for their dinner.

One of two things must happen: (1) either the vote not to pay for the dinner must be thrown out; or (2) the restaurant man will have to go out of business and there will be no more dinner.

ALL the solemn cant about the voice of the people being the voice of God will not serve to make such fairy-tale economics stand up in actual practice. As Federal District Judge Ragon recently said in granting an injunction to restrain enforcement of an ordinance voted by the city of El Dorado, Ark., to lower telephone rates, "fixing rates through a political campaign is just not good horse sense."

Even those politicians of history who have displayed the most skill in capturing public support have had to admit that the voice of the people as expressed at the polls is after all but the judgment of the market place. Leaders of the French revolution, after riding into power on the crest of aroused mass agitation, suddenly discovered that the voice of the people needed "guidance" and direction in the interest of the greatest number so that the "ignorance of rabble rule (*sic!*) shall not destroy the state." They set themselves up as advisers and directors of *vox populi* and moved rapidly toward such suppressive dic-

Supreme Court Must Be Free from Political Pressure

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tatorial measures that the fickle *vox populi* soon deserted the Citizens' Republic for the more glamorous rule of Bonaparte, who made no bones about calling himself an Emperor.

POLITICAL "strong men" who justify their dictatorial methods on ground of "public interest" or "people's choice," therefore, are no less Fascist in spirit than Herr Hitler or Signor Mussolini, who likewise permit the people to express their approval periodically at the polls through such elections as occurred in Rome last March.

There are other cases than in Georgia where state regulatory commissions have been brought under the complete domination of determined state governors by political maneuvering. It took Governor Pinchot years of persistent effort to "control" the majority membership of the Pennsylvania commission. Governor Comstock of Michigan was more successful within a single year in accomplishing the same end. And it isn't the state regulatory commissions alone that have come in for dictatorial administrative control. Last January, Governor W. H. (Alfalfa Bill) Murray sent to the secretary of state a proposed initiative petition to amend the Oklahoma Constitution so as to abolish the state supreme court and permit him to name a new one.

INDEED, we need not look outside of Washington, D. C., for evidence of the growing tendency of the administrative branch to crowd out independent power of other governmental boards or bureaus. During the Hoover administration, a suggestion from the White House to the Interstate Commerce Commission concerning a certain matter before it was roundly criticized as an attempt to influence the exercise of judgment of an independent tribunal. Yet President Roosevelt dismissed the late William E. Humphreys from the Federal Trade Commission, frankly giving as his reason that he wanted a more coöperative membership. This,

notwithstanding the fact that the statute creating the commission requires at least two members thereof to be of an opposition party.

In paragraph (L) of § 2 in the Muscle Shoals Act of Senator Norris we find the interesting and somewhat unusual "confession of faith" clause:

> All members of the board shall be persons who profess a belief in the feasibility and wisdom of this act.

SOME of us might believe that if governmental officers took oath to support the Constitution and faithfully to perform the duties of their office, that would suffice. But it is apparent that the purpose of the confession of faith clause is to insure that appointees under the act exercise their power to the extreme limit in the direction indicated by the spirit of the act—to accomplish, if possible, more in that direction than specified by the act itself. The purpose of the Tennessee Valley Act is, *inter alia*, to encourage government ownership. Under their oath, therefore, the TVA commissioners must be zealous to that end. But the avowed purpose of the Transportation Act of 1920 was to restore the railroads to private ownership and operation. Should the Interstate Commerce Commission, using this same line of reasoning, not be filled with ardent devotees of private ownership? Or would it not be better to leave both tribunals to sober and competent administrators, with discretion to use their own judgment, without exacting an oath of allegiance that negatives the idea of discretionary judgment should the act itself prove in some particular unworkable?

IT is interesting to note that the Tennessee Valley Authority, in examining the qualifications of applicants for positions as accountants, required answers to a questionnaire asking among other things:

> 1. Whether the applicant is in sympathy with the purposes of the act;
> 2. Whether the applicant has evidence of his "social mindedness."

A plain person might believe that the main purpose of an accountant is to figure. Is there a difference then between the figuring of an accountant who is "social minded" and one who is not? Is there a difference between calculations of accountants not in sympathy with an act and accountants that are? Figures, we are told, never lie, but it would appear that they may be "social minded" and even "sympathetic."

There is other evidence in Washington that the strong arm of administrative dictatorship may even be reaching towards the independence of the Federal Judiciary. During debate upon the recently enacted Johnson Bill depriving lower Federal courts of jurisdiction in regulatory cases, one member of the House opposed the measure upon the ground that it was the opening wedge toward abolition of the Federal district courts; whereupon, another member advocating the bill freely admitted that he thought the elimination of the lower Federal judiciary would be a splendid reform.

SENATOR Norris of Nebraska has frequently expressed similar sentiment in the upper House of Congress, and is particularly pained because Federal judges are appointed

for life. He resents the idea of a priesthood dedicated to Justice withdrawn forever from the influence and bickerings of the political forum. He wants his judges close to the people where they will be swayed or crushed by the shifting tides of public sentiment.

Even the highest court is not immune from the desire of some to see the administrative branch in absolute control of the government. During the argument on several cases involving certain New Deal type legislation in the highest court we find the following comment from Paul Y. Anderson, Washington correspondent of the *Nation:*

> It is often and pertinently asked what the United States Supreme Court will say about the constitutionality of some of the Roosevelt measures. Certainly there are at least three reactionary old men on that bench who would take profound satisfaction in standing by their plutocratic concepts of society if they knew the mob was battering at the door, and there may be more than three. That eventuality already has been seriously considered here by persons interested in the success of the New Deal. There are ways of meeting it. Congress could pass an act requiring members of the court to retire upon passing the age of retirement. That would remove two of the worst. It would also remove the best, Justice Brandeis, but that could be met by a provision enabling the President by executive order to extend the tenure of designated justices who had reached the age limit. Or the size of the court could be increased by law to permit the appointment of additional justices whose ideas developed subsequent to the year 1880. It has been done. If this reporter knows anything about the temper of the present administration, it will never permit the whole economic structure of this country to be disrupted and demoralized because less than a half a dozen dyspeptic old men are determined to uphold precedents established before the invention of the telephone. As has often been made clear on these pages, I do not relish these encroachments of the executive upon the prerogatives of the other branches, but sometimes a condition arises which must be dealt with.

MR. Anderson does not, of course, speak for the administration. Nor is he of the legal profession. But he is ably supported by the highest legal officer of Michigan, Attorney General O'Brien, a Democrat of high standing, who told the Bar Association at its Grand Rapids convention:

> With the President at the wheel Congress and the courts must function as able seamen. Where is the court that will attempt to mutiny? Where is the court that will attempt by injunction to scuttle the ship?
>
> Democracy is on the march; the courts of this country always will be respected as they always have been and ought to be, but no court will be allowed to stand in the path of progress toward a more just and equitable social system.

There may be some lawyers and some judges who will not take kindly to Mr. O'Brien's suggestion that the members of the Supreme Court should regard themselves somewhat in the nature of disciplined deck-swoppers. That is, perhaps, the status of German and Soviet judges, but do we want or need such complete abdication of judicial independence here?

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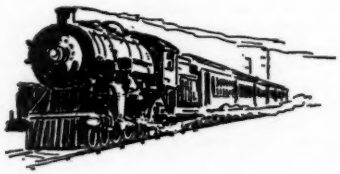
As a matter of historical interest at least, it might be well to study the work accomplished in the field of utility regulation by commissions that have been permitted to exercise independent judgment to the fullest degree. The attitude of Governor Ritchie of Maryland, who has consistently refused to interfere with the discretionary acts of the state commission, is noteworthy. It would be a noble experiment to see what commission regulation could really accomplish if we paid commissioners enough to attract able men to work properly and then left them alone.

UNFORTUNATELY, the current trend is in the other direction. Regulatory Fascism—the latest step in administrative control—is growing. Perhaps it will bear results. Perhaps it will prove more satisfactory to the people than the old idea of government by checks and balance.

But whether such a policy succeeds or fails, the fact remains that it is something quite different from the concept of constitutional government which we inherited from Thomas Jefferson.



Railroads' Advance toward Recovery

MEASURED by their gross and net earnings the railroads have made about the same advance toward recovery as, on the average, has general business. Their gross earnings in the first quarter of 1934 were 21 per cent greater than in the first quarter of 1933. Their net operating income, while only one half as great as it averaged in the first quarters of 1925–1929, was almost 3½ times as great as in the first quarter of 1933. They employed an average of 979,763 persons, an increase over the first quarter of 1933 of 44,000, and the increase in March over March of last year was 78,932. Their purchases, which are of great importance to the durable goods industries, and are closely determined by the amount of net operating income they earn, have been thus far this year the largest since 1930.

—SAMUEL O. DUNN,
Chairman, Simmons-Boardman Publishing Company, and Editor, Railway Age.

Penny Wise, Pound Foolish

Marginal reductions in utility rates declared to mean little to individual customers but much to a business needing large reservoirs of capital.

THE author proposes, as a means of salvaging and pooling the losses resulting from futile electric rate slashes, the development of state mutual power companies over which private management would be retained by a controlling percentage of ownership, the state holding the remaining percentage of ownership and having a voice in respect to operation and rates, the profits of the enterprise to be divided equally between the state and private ownership from the start.

BY FREDERICK H. McDONALD

THE corn that is being ground in the mill is very seldom the object of sympathy. The grist that comes from the mill is the real concern, and its usefulness quite diverts attention from what is happening to the kernels of grain as they pass in their journey between the upper and nether millstones.

The utility regulatory commissions, functioning in our various states as a buffer between the public, with its politically fired demands, and the utility corporations representing large groups of investors, are today subject to almost the same kind of grinding, painful, pulverizing pressure as are the corn kernels in a grist mill.

The equitable and basic thought behind regulation—the one premise that makes it tenable and acceptable in a democratically labeled economic structure—is the principle of fair exchange. Recognizing in utility operations the provision of a basic necessity and a generally needed commodity which could much more economically be provided on a noncompetitive basis, the theory of regulation was projected to protect the public, on the one hand, from exploitation, and to insure to the utility an amount and continuity of income sufficient to meet its reasonable requirements for a fair and allowed profit.

In exchange for a more or less fixed, and presumably satisfactory, level of regular income, the utility is required by agreement to forego the expectation of those periodic high profits needed in ordinary competitive enterprise to replace the regularity of a reasonable but dependably assured income. The public, presumedly, has the assurance that through its elected representatives, the regulatory commission, its own interests will be protected, and that the amount of profit

and the kind of profit allowed will be reasonable, and in the public interest.

RECOGNIZING the desirability of the provision of a noncompetitive service, and the advantages of a monopolistic occupation of a given territory, the present bilateral structure of regulation and agreed submission to regulation gradually has been evolved. There has never, however, been any real recognition or any real acceptance of the essentially monopolistic character of regulated utility services. Competition of varying kinds has persisted and now threatens increasingly to grow, particularly in one of the most essential and one of the most socially effective of the utility fields—that of the production, the distribution, and the sale of electric power.

The kind of competition arising from other methods and processes of achieving the same result is, of course, one of the inherent factors in any business, and it is probable that there is no scheme by which the electric power industry could be freed from the competition of privately owned, self-provided steam, gas, oil, and water-power units, whether for industrial or for domestic power and lighting services.

The other form of competition, however, that of going into the same kind of business to provide the same kind of service in the same community is a type of competition to which a utility service rightfully should not be expected to be subjected. And yet, today, led by the National Government itself in the building, financing, and establishment of various large river-power developments, we find much of the nation's attention turned to the possibility of producing publicly, in each locality, its own electric power.

THE creation of the Tennessee Valley Authority struck not only the imagination of many conservatively minded people, but was the equivalent of placing a firebrand in every keg of local political gunpowder, and has formed the premise and the precept for much of the argument which is now current in the very active movement in many communities to own and produce their own power.

Added to this increasing movement has been a climactic outburst of politically fed and fanned outcries for continued and further reductions in local power-rate structures.

Between the public on the one side, demanding lower rates and developing self-owned identical competition, and the utilities, facing the loss of local market and the vitiation of income, have sat in almost every state in the Union the legislatively created regulatory commission as judge, jury, and hangman. The position which these commissions now occupy is one calling for sympathy, understanding, and appreciation not only by the public, but by the multitude of investors in the properties rendering public utility service.

IN most cases, the highly conscientious members of these commissions are faced with the difficult and discouraging problem of having public movements, utterly beyond their control, constantly harassing them to be a party to the lowering of income and to the loss of the developed markets of power companies which they know must receive an adequate in-

come, and must have an adequate market for their services, if the very services are to exist and continue.

SPORTSMANSHIP, latent in all of us, rebels against this uncompensated vitiation of revenue and assets, and against the understandable but perplexing influences under which these fair-minded bodies of elected officials must from time to time bow to popular demand, which they know themselves cannot ultimately be in the real interests of the public. Heckled by the whackings of butchering political demagogy, they can turn only to face the nightmare of killing the goose that lays the golden egg of essential service, of needed tax revenue, and of successful business operation and employment in the community.

The problem revolves in a vicious circle. Unless some method can be made successfully to cut this constantly tightening spiral and to stretch its elements into the long road of paralleling interests, mutual opportunities, livable rates, and public protection—disaster must result.

The aspect of leadership and example contributed to this problem by the National Government is beyond immediate local control or influence. When the Tennessee Valley Authority, for instance, is established to provide a yardstick for the measurement of a proper basis of rate structure, the plain bare fact seems boldly to be ignored that in almost every one of our forty-eight states, public utilities and power companies operate now under such a form of commission-regulated rate structure as to almost be without any freedom of action as to the rates charged the public.

WHEN the claim is made to the public by the politician that these actually governmentally stipulated local rate structures are unfair, unreasonable, and exploiting, we have the paradoxical picture presented of the creation of a new, super-governmental agency to do what this new governmental agency claims is being inadequately done, or utterly failed in being done, by the local governmental regulatory body. The claim, on the one hand, that local governmental regulation is unfair and ineffective and not in the interests of the people, is not only the equivalent of a direct condemnation of every state regulatory commission that has promulgated permissible rates, but it is an anomalous answer to suggest the setting up of another type of governmental operation to achieve the same result.

In addition to the effect of the constant lowering of rates and the competition of municipal and other governmentally owned power producing facilities, the power companies not only have faced a growing tax demand as regards high valuations and higher ad valorem tax rates, but in

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many communities are now faced with a direct excise tax on generated power output. This, in all instances, is increasing the cost of local operation and has brought up new problems of rate-structure determination by the regulatory commissions where previous power rates have been based on then existing tax assessments, without allowances for these new increases. Nor have these excise taxes been confined to local communities, since the Federal government itself has reached out to this source of revenue.

A PECULIARITY of the trend toward governmental operation by local communities is that lower rates are not the real objective, but that additional revenue to the community is sought by entering into the delivery of power as a business and as a purely profit-making enterprise.

While the regulatory commission is without jurisdiction either as to tax assessment or as to the competition from municipal and governmental operation, the effect on rates is inescapable and tends toward a necessarily higher allowed rate structure, all in direct conflict with the parallel insistence for lowered rates. The commission finds itself bedeviled, either way it turns.

Fortunately, the problem of the local trend toward governmental operation for revenue, to replace local taxes, and the continuing cry for lower rate benefits, both can be met by a new local relationship between the state and the public utility. An analysis of the elements composing this problem will show a possible solution.

Much of the movement for local ownership is destructive, since it involves not only the uncompensated appropriation of the local market now supplied by private enterprise, but too frequently comprises the entire vitiation of the local private investment in distribution and generating facilities. In most cases a new duplication of necessary facilities is undertaken, causing the abandonment of existing facilities. The result is destructive to private enterprise, an unnecessary waste of public moneys, and often a debatably justifiable move on the part of the local community.

OFTEN, the basis for this type of enterprise is the politically advanced charge of inequitable and oppressive rate charges by the existing utility. At a time when the rates for electric current have reached their lowest level in history, without having ever gone through the rapid rise in price experienced by most commodities in the post-war period, this is a sufficiently anomalous claim to warrant close study. The present cost of living, for instance, is estimated as being 35 per cent higher than in 1913, while the cost of residential electricity is placed at 36 per cent lower than in 1913.

As a matter of plain fact, in the last few years of an already high cost of local government, tax revenues have been diminishing, with a total inability of many property owners to pay any taxes. This has brought about defaults and loss of revenue which, in the absence of corresponding reductions in the costs of governmental operations, warns of the need for additional tax assessments.

The picture, then, when put up to these communities, for going into the

Significance of Destructive Criticism of Utility Regulation

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power business and of getting from it a new source of profit revenue applicable to local governmental operations, has been an intriguing and an attractive possibility.

As against the nationally controlling motive of providing a yardstick for a proper rate structure, presumably of reduced rates, this local conception does not involve the lowering of rates. Paradoxically, it presumes at least the continuance over a long period of time of the present going rates so that the consumers of power may, in this indirect form, contribute to the tax needs of the community.

WHILE the occasion of the local community's replacing present private enterprise, rendering an adequate service, by a publicly owned enterprise, wiping off the private enterprise investment, is not necessarily a product of equity or sound judgment, these things are being done now, and they threaten to be done on a larger scale in the nearing future. These are facts and not theories; and this condition will have to be faced on this basis.

Has the community actually any justification for taking unto itself this right of superseding private investment, or of demanding continually lower rates?

There seems some equity in the viewpoint that the local community has some right to benefit by its capacity to produce a general, basic, public utility necessity at a profit, since in every case privately owned public utilities are operating under local franchises or grants of privilege. While these franchises may be, and generally have been, given on a definite tenure of time, they have generally been renewed and tend to become perpetual. The local community may have some equity in the viewpoint that these franchises have been given without compensation other than the provision of the agreed service. But these services, in all cases, have been adequately paid for by each consumer.

The community, then, may rather fairly hold that in these franchises the community has an equity, and that some return to the community from the profit of operation would be reasonable; or that the community might properly terminate the franchise in its own favor.

THIS apparent equity right is somewhat borne out by the comparable situation developing from a long-term lease on a down-town piece of valuable real estate. Leaseholds of this character may run from forty-nine to ninety-nine years, at stipulated annual rentals; but some provision generally is made both for the termination of a lease, and for the acquisition by the owner of the property of the physical structures on the property at the termination of the lease. Usually these structures automatically revert to the owners of the property without compensation to the lessees. Occasionally, by terms of the lease, they must be acquired by the property owners, either on a stipulated basis of purchase, or on the basis of appraisal of the then value.

In all cases, however, the property owner is recognized as having the right of acquisition in his own interest of the structures on a leasehold property at the termination of a lease; and all leases have definite periods of termination.

The public might readily look on franchises to public utilities as terminable leaseholds.

While the consumers under these conditions do pay for the individual utility services rendered, the general public may be said to have a direct benefit in the social and economic value to the community of these utility services, as against their not being there. It may be said that this compensates for the franchise or leasehold right of exclusive operation. On the other hand, as in the real estate leasehold, the grantors of these franchises may be said to have some property rights entitling them to the right of acquisition or profit participation at the end of a reasonable and agreed length of free franchise tenure. From this angle, the community has an equity in a local utility opportunity, operating under free franchise, and we only have to determine the fair period of agreed franchise time, to determine the point at which the community *by proper equity notice or compensation* might fairly take over the physical properties of the utility, either on an agreed basis of direct reversion to the community, or on a basis of some equitable purchase form of acquisition.

THE recognition of this franchise equity right, if fairly exercised, can dispose of the question of the reasonableness or fairness of a local community's entrance into the power field or to a claim for participation in profits, or the equivalent in properly possible rate reductions. It does not give an answer to the unprepared-for destruction of private investment without compensation or recourse; nor does it guarantee reasonable, fair, or the most beneficial rate structures.

Since the lowering or the appropriation of rate structures is the politically admitted objective of all the moves to governmental ownership of power facilities, let us take a look at these rate structures.

Whether the going rate structures now current in the community are higher or lower than they should be to the consumer is not so much a point for argument, in our objective, as is the point whether they have to be any lower in order that they may be paid by the consumer without hardship. Power rates come under the few commodity services that since the World War not only have not risen in cost to the consumer, but have had a constantly decreasing trend. Unquestionably, existing rate structures during a period of normal business activity are not too difficult, as they form a very minor percentage of the cost of operation in the average domestic household or business. Yet the trend of public sentiment and political need is such that one may say without fear of contradiction that whatever this rate structure is at any given moment, political and community pressure will be brought in the future to bring about a continually downward movement, by decreasing increments, to an ultimately extremely low rate basis.

WHETHER the utilities can stand up under this uncompensated whittling away of their sources of revenue is a serious question, recognized as such by every regulatory commission. Many of the power companies say that they cannot operate even now, for a basis of allowed net return, under the present rate structure. Yet, not only is this downward revision inevitable, but its constant recurrence is just as inevitable. No matter what reductions are made today, more will be demanded, and the same political and community chiseling will produce further whittlings. The value of this to the consumer rapidly becomes negligible. In a recent rate adjustment case, a state public service commission estimated that around a million and a half dollars would be saved consumers by a percentage of rate reduction, and this reduction was made. Yet, towards the end of the first year of operation a consumer came in and made the plea to the commission that while he knew the reductions had been made, he did not save enough money the whole year under the lower rate structure to buy himself a new pair of shoes; and he wanted to petition for a greater reduction.

This shows in a concrete way the futility and comparative uselessness of continuing marginal rate reductions in the small personal benefit to the individual consumer, as compared to the immense totals that these small benefits aggregate, and the effective reservoirs of useful capital they form, whether to be applied to the use of the utility, or for other use.

IN other words, four-and-a-half or five dollars could not mean much,

¶ "MUCH *of the movement for local ownership is destructive, since it involves not only the uncompensated appropriation of the local market now supplied by private enterprise, but too frequently comprises the entire vitiation of the local private investment in distribution and generating facilities.*"

over the course of a year, to this particular consumer; but a million and a half dollars means a lot to any utility or business, and could mean a lot for other purposes.

In this opportunity to salvage and pool in a useful aggregate the losses of futile marginal reductions in rates, we may have the key to a new future course, to the question of ownership and distribution of local power, to the trend of local governmental ownership, and to the national fight for reduced rates which directly conflicts with the trend of local ownership for developing tax replaceable revenue from high local rates.

Suppose, now, instead of vitiating the valuable effect of a total of a million and a half dollars in so negligible a consumer benefit as to have been the basis for a new complaint, we maintained the now reasonable rates and took one half of this saved reduction as revenue to be applied to the reduction of local taxes, and let half of it go for specified purposes to the utility. Would we not have in this a basis for a common and mutual benefit that might lead to a more mutually beneficial set-up for local power operation?

WHEN we consider the operation of such a complicated and large business structure as the production, the distribution, and the sale of power, we know that we need the genius, the energy, the initiative, and the rewards of private enterprise to make it effective. Without the constant pressure of earning dividends, it is hardly conceivable that private enterprise would have made the advances in science and in efficiency in power production and distribution which have enabled it to compete with, and supplant, all other forms of light and many forms of power. The accountability for results, lacking in political enterprise, has engendered a constant willingness to promote consumption by the lowest tenable rates. This has broadened the base of power consumption by stimulating new uses and new masses of consumers, which in turn have produced new masses of revenue from which a decreased profit per consumer has totaled up new net revenue.

This factor of efficient management must be maintained. Only in private initiative and enterprise has it yet been found, and only through the rewards and discipline of private enterprise can it be attracted and made effective.

Yet, on the other side, we have the claim of exploitation by the public; and the demand by the public to enter into the power business in order to reduce taxes.

In both of these public ownership viewpoints lies the latent thought that under public ownership the public will be protected. Many seem to prefer to hazard the sacrifice of technical advance, and the almost certainty of minimum betterment or even loss, in favor of this assumption.

IT would not take much time to make an assay of the good points of both private and public ownership, to see if from them could not be salvaged the best of each for the pooling of these common benefits in a new, mutually profitable and useful line of procedure. We know that private initiative does not operate at its most effective level under full public con-

The Profit Motive an Aid to Business Development

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trol, and that the public does not feel free from exploitation if it does not have ownership.

We therefore offer the suggestion that both of these needs be considered as a new basis of procedure; that private enterprise be looked to for management, with public ownership carrying advisory managerial functions as to rate structures and the scope of operations, with both private enterprise and the people participating in ownership and in resulting profits.

Concretely, we recommend the development of what might be called state mutual power companies, on a state-limited basis. The investment now held by private ownership would gradually be amortized through payments from existing rate structures maintained at promotionally tenable levels over future periods. As this amortization of present investment progresses, the resulting percentage of net revenue can be diverted as income to the people of the state. The final objective would be to keep private management, maintained in interest, willingness, and effectiveness by a controlling percentage of ownership, with the state having a voice in operation and rates, and holding the remaining percentage of ownership. Net profits, above investment amortization needs, would be divided equally between the state and the private ownership, right from the start.

This is equivalent to public ownership and supervision, with private management, and a joint division of profits.

THE problem of determining the desirability, the justification, and the benefits of a program of this type as to any one state, while apparently of a sizable nature, in fact becomes rather simple as its elements are an-

alyzed. In most states, more than one power company operates and there would become involved a question of merging or of unifying the operation of these companies. The fact that many of these companies are subsidiaries of other operating or holding-company groups, should present no particular financial or managerial difficulties. Operating economies of course would result from combination, not only in personnel, but in the standardization of accounting procedure and in the creation of an accepted and fixed basis for the setting up of permissible charges, particularly those of depreciation and of maintenance and replacement costs. Savings in these fields would represent substantial percentages of gross revenue. The basis for retirement of the present private investment would be a product of the length of time desirable to attain the objective, and the amounts to be deducted as savings and by agreement with the utilities, from net revenue as applicable to retirement of the present investment in order to develop state ownership equity.

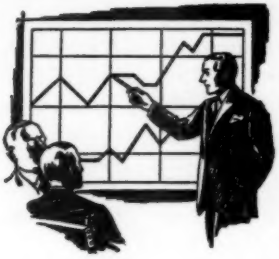
The question of competition and rates from municipal and other locally operated utilities would arise, but by various available means could probably either be brought into line, or these utilities incorporated in the state operating structure under conditions at least as favorable if not actually more favorable to the local consumers than under the present local community operation.

Permissive and enabling legislation would be necessary, a problem that would vary in many states, but one that should be satisfactorily settled if the advantages and objectives are made clear to the public and to the law-makers.

The question of the interest and willingness of the private power companies to coöperate in this type of program is one primarily for informed negotiation, after the necessary surveys and studies have been made of the data, factors, and essential elements involved. The alternatives now on the horizon, with the trends within the industry, and the trend of public sentiment toward ownership and operation of its own facilities—these, coupled with the eventually certain destructive effect of the almost insatiable trend and demand for continued rate reductions, present rather an encouraging ground for the assumption that under reasonable and fair tenders, guided by informed, able, and understandingly impartial judgment, satisfactory progress could be anticipated and the jointly beneficial results mutually attained. This would result in the reasonable stabilization and settlement of one of the most harassing and critical problems in the American economic structure.

Six important citizens from a town a little way outside Baltimore called upon a vice president of a railroad to protest vigorously the removal of a certain train. It left the town with only 2 trains a day, it was a train that had been running for many years, it served a town of 3,000—all this and more was pointed out. The railroad man listened. Then he asked each of the six visitors, "How did you come to town today?" Well, each came by automobile. "Glad to have seen you, gentlemen," said the railroader, "and good morning."

—*Business Week.*



First Nation-Wide Survey of Electric Rates

Not to be an investigation of reasonableness of charges

By BASIL MANLY
VICE CHAIRMAN, FEDERAL POWER COMMISSION

UNDER authority of a congressional resolution, jointly introduced by Senator Norris of Nebraska and Representative Rankin of Mississippi, the Federal Power Commission is now engaged in the first nation-wide survey of the rates charged for electric light and power that has ever been undertaken in the United States. It will cover the charges for electric service in every community, large and small, as well as the rural areas. When the task is completed it will be possible to compare the rates for various classes of service in any community with the charges in other communities having the same general characteristics. Thus, for the first time, the facts will be available upon which an accurate appraisal of electric light and power rates in every state in the union can be based.

It should be emphasized at the outset that the Electric Rate Survey is not an investigation of the reasonableness of the rates charged by private utilities or municipal plants. As far as the private companies are concerned, that is the function of the state public utility commissions upon which the Federal Power Commission has no desire to encroach. There is reason to believe, however, that such a compilation and analysis of rates will be of great value to the state commissions in the performance of their statutory duties. Many of the commissions have offered their wholehearted coöperation and have placed at the disposal of the Federal Power Commission their extensive collections of data relating to electric rates and services.

THE extent of the task imposed by Congress in directing the making of this survey is indicated by the fact

that there are in the United States approximately 15,500 communities supplied with electric service by privately operated companies or municipal plants. This service, according to the Electrical Census of 1932, is supplied by 1,627 privately operated companies and firms and 1,802 publicly operated plants. Taking into consideration all the various classifications of service, as well as the many instances in which alternative schedules are offered for the same class of service, it is probable that there are now in existence throughout the United States 100,000 or more separate rate schedules. These must be compiled, collated, and so analyzed as to afford a sound and scientific basis of comparison.

The only published information now available regarding rates charged for electricity in all sections of the United States is that contained in the *Rate Book* issued annually by the Edison Electric Institute. This compilation covers, however, only the 473 cities having a population of 20,000 and over. This is only 3 per cent of the communities which receive electric service.

The Edison Institute *Rate Book* reports only the rates charged by private companies, no rates being quoted for any municipal or publicly operated plants. This deficiency has recently been supplied in part by a compilation of the electric rates of 365 municipal light plants issued by the engineering firm of Burns and McDonnell of Kansas City. Even if both these sources of information are combined, they cover only a small part of the cities and towns. Furthermore, there is almost a complete lack of published information regarding the rates charged for rural service. This deficiency is of the greater importance because, generally speaking, it is the people who live in the smaller towns and on the farms who pay the highest rates for electricity.

THE desirability of a complete compilation of electric rates appears to be appreciated not only by public officials of the Federal, state, and municipal governments, and by domestic, industrial, and rural consumers, but also by the officers of private utility companies as well. Everyone who is familiar with the history of the development of the electric light and power industry knows that in most instances rate structures were not scientifically determined. In many cases, like Topsy, they "just growed." Local companies established rates years ago when lighting constituted almost the only domestic use and there was little possibility of increasing consumption by the use of promotional rates. Only the local conditions then existing were considered and no thought was given to the rates charged in neighboring communities. When these local companies were absorbed in the mergers which were so numerous during the past twenty years, these local rate structures were frequently left unchanged. As a result it is not uncommon to find the rates in adjacent communities, which are similar in all essential characteristics, entirely out of line with each other. One of the larger holding company groups, which has recently been revising its rate structure, found that its operating

Reasonableness of Rates Not Involved in Rate Survey

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companies had hundreds of local rates which were so widely divergent as to be actually discriminatory.

THE more progressive electric utility companies periodically overhaul their rate schedules to eliminate discriminatory rates and create as far as possible standardized rate structures for the various classes of service. Such revisions will be greatly facilitated by the publication of complete rate data for every city, town, and rural area. With complete and readily comparable information before them, the rate experts of the private companies and municipal plants will be better able to readjust their own rate structures in the light of the rates charged by others in their general territory.

The plans for the Electric Rate Survey, as for the National Power Survey, which the Federal Power Commission was directed to make by executive order of President Roosevelt dated August 19, 1933, have been worked out with exceptional care. This was necessary because of the unprecedented character of both these investigations.

After the necessary preliminary studies of existing information had been completed, the Federal Power Commission invited to Washington the chief executives and leading experts of both the publicly and privately operated utilties. These conferences, which covered the better part of two weeks, discussed frankly and without restriction all the questions which might be developed in the course of the investigation with a view to developing a fully matured conception of the scope and character of the inquiry.

FOLLOWING these preliminary conferences the experts of the commission sat down with the experts of the private utilities and municipal plants and worked out a set of questionnaires which they believed would develop the essential facts. In order to test the practicability of these questionnaires and their adaptability to the form in which the majority of public and private plants keep their records, tentative drafts were prepared and taken out into the field by experts of the commission. These preliminary tests have resulted in perfecting the questionnaires to harmonize with the prevailing forms in which the private and municipal plants keep their records and will greatly facilitate the compilation of the information desired by the commission.

Realizing that, in view of the complexity of the industry, even these careful preparations would not in themselves insure the compilation of complete and accurate data, the commission is now engaged in the selection of a group of specially trained field agents who will act as "trouble shooters" and assist the companies and municipalities in the solution of any peculiar problems which their methods of organization and operation may present. These field men will be under the direction of regional supervisors who have been selected with a view to securing the most effective coöperation on the part of all branches of the industry, both public and private.

As director of the Electric Rate Survey the Commission has appointed Dr. William E. Mosher of Syracuse University. Dr. Mosher was chosen for this position because of his unusual combination of broad knowledge of all phases of the electric utility industry and his demonstrated capacity for thorough and unbiased investigation. As the author of "Electrical Utilities" and "Public Utility Regulation" he is an acknowledged authority on problems relating to the operation and regulation of public utilities. As director of the School of Citizenship and Public Affairs of Syracuse University he had devoted special attention to the problems of the relations of government and business. In addition he has had extensive experience in the direction of official inquiries, notably as Director of Research of the Joint Legislative Commission on the Revision of the Public Service Commission Laws of the State of New York.

Aside from, but closely related to, the principal task of compiling and analyzing electric rates throughout the United States, the commission is preparing to carry out through the Electric Rate Survey a number of special studies which it is believed will be of great interest to consumers and public officials and of practical value to the managers of private and municipal plants. Among the subjects which are under consideration for these special studies are such questions as the relation of rate structures to the consumption of electricity by domestic, commercial, and rural consumers; the relation of taxation to the rates charged by private and public plants; the types of rate structures and provisions for financing extensions best suited to promote rural electrification; and the relation of the

rates charged for industrial power to the location and development of heavy power-consuming industries.

THESE questions are of great practical interest both to plant managers and consumers. Many progressive plant managers believe that a policy of successive rate reductions on a promotional basis will result in such increases of domestic consumption as to benefit both gross and net revenues. Few of them, however, have sufficient information available from the experience of their own companies to determine with any certainty the type of rate reductions which will most effectively promote increases in domestic consumption, the extent of the lag between rate reductions and increases in various classes of electric utilization, and other similar questions affecting the determination of sound policies of management. By combining and analyzing the experience of numerous companies who have tested out various policies over a series of years, it is believed that reliable answers to these questions can be obtained which will be of great value to both public and private utility operators.

In carrying out this large and complex task the commission has been assured of the whole-hearted coöperation of both the privately and publicly operated branches of the industry. This is highly desirable from the standpoint of all concerned. If, however, any group or local interest should fail to coöperate, there are sources from which the commission would be able to secure substantially complete and accurate information. In such cases those who withhold the production of information or records could not complain of any inaccuracies which might develop as a result of the use of secondary sources of information.

THE plans of the commission contemplate the completion of the compilation and analysis of the essential data regarding electric rates so as to permit publication as soon as possible after the beginning of the next session of Congress in January, 1935. This will require not only strenuous work on the part of the staff of the Electric Rate Survey but also wholehearted coöperation from the private companies and municipal plants. Such early publication is in the interest of all concerned so that the information will be substantially up to date when it is published.

It is believed, therefore, that we may reasonably look forward to the publication soon after the first of next year of the first nation-wide compilation of the rates charged for electric light and power throughout the United States.

"REGULATION, intelligently applied, must be equally as protective of the rights and interest of those rendering the service to which it is applied, as to the general public dependent upon that service; and we must never lose sight of the fact that the group under regulation is equally a part of, and therefore, entitled to the same consideration, as every other part of the body politic."

—FREDERICK J. KOSTER,
President, California Barrel Company.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

GEORGE L. KNAPP
Labor.

"Railroads are everybody's business."

STUART CHASE
Economist.

"Capitalism, old style, is in my opinion walking out on us."

DAVID E. LILIENTHAL
Director and General Counsel, Tennessee Valley Authority.

"There is no basis for the hysterical cries of those who see, or pretend to see, disaster ahead for the electric industry."

FRANK R. MCNINCH
Chairman, Federal Power Commission.

"Before we may have substantially lowered rates, the present holding company system must be subjected to rigid Federal supervision."

WENDELL L. WILLKIE
President, The Commonwealth & Southern Corporation.

"State laws and the absence of a Federal incorporation act make holding companies necessary and now prevent the operation of all units under one corporate charter."

SAMUEL O. DUNN
Chairman, Simmons-Boardman Publishing Company, and Editor, Railway Age.

"If the railways are forced into government ownership the same influences will also force so many other industries into it that we shall virtually or actually have state socialism."

EUGENE H. KLABER
American Institute of Architects.

"It is time that we abandon the idea that housing is a business and accept it frankly as a public utility as we have accepted education, hospitalization, fire and police protection."

H. L. MENCKEN
Author.

"They (the English) have a surplus in their treasury, and are even reducing taxes. Yet they have done this without putting a single bright young professor on their payroll, or laying out a cent for economic mad-stones and bile-beans."

THOMAS A. EDISON

"There is far more danger in public monopoly than there is in private monopoly, for when the government goes into business it can always shift its losses to the taxpayers. If it goes into the power business it can pretend to sell cheap power and then cover up its losses."

Not Much in Some Names

Uncomplimentary epithets applied to opponents in the municipal ownership controversy held to be a poor substitute for logic. Let's stop fooling ourselves, says the author, and get down to fundamentals.

By C. WOODY THOMPSON

For years the electrical industry has kept up a running fire against municipal ownership, yet the municipal plant has persisted and now seems to be on the verge of a significant increase in numbers. What we mean is that in spite of all the public "education" by the private interests, they were unable either to eliminate the municipal plant or to head off the present revival of public interest in it.

Now the time has come to get down to fundamentals in this problem. Where have the arguments of the utilities been weak? What sins of omission are now arising to haunt the private interests?

The utilities have been too prone to rely upon sweeping generalizations and catch phrases, assuming erroneously that by such process they have condemned the opposition to everlasting silence. Shibboleths help, but "you can't fool all of the people all of the time." It may have helped in 1928 to charge Al Smith with being a socialist, but now many of our Iowa farmers are proud to be so labeled.

People were long anesthetized by the cry against government in business, now they are calling for more government in business. They are saying that government can do no worse with business than business did with itself. Let's quit fooling ourselves, therefore, and get down to fundamentals in this municipal ownership question.

First, let us resolve to quit calling names.

The National Electric Light Association coined the phrase municipal (political) ownership, thereby hoping to discredit the movement. Rob Roy MacGregor, as disclosed by the Federal Trade Commission's investigation of public utility corporations, wrote an illuminating letter in which he suggested that a certain unfriendly candidate for office be tarred and feathered with the label of bolshevik.

For instance, suppose we call the

municipal ownership movement socialistic. Let's analyze the statement for its strength or weakness. To be an effective argument it assumes that municipal ownership is a form of socialism, and that socialism is quite undesirable. This connection does not necessarily follow. Socialism may not be undesirable at all; in fact, it may well be the pattern of our next economic order. But more fallacious is the implication that municipal ownership is socialism. There may and there may not be any connection. No one assumes our government to be socialistic because it operates the mails, furnishes fire, police, and health protection, maintains schools, builds parks, roads, and libraries, and performs a host of other social and beneficial services.

WHERE is the line between those things permissible for a capitalistic government and things not permissible?

May not the utilities be in a sort of twilight zone so that mere evidence of ownership and operation proves nothing about the form of government? We must not forget that for over fifty years, the Supreme Court of the United States has been saying that one of the bases of regulation arises out of the fact that the railroads and utilities perform an *essential public function.* Surely it requires no wrenching of political theory for the government to own the instrumentalities through which a public function is performed. Thus, municipal ownership does not necessarily hold any threat to our present competitive system.

A corollary to this type of argument is that often advanced by the press: if we have municipal ownership of the utilities, we will soon see the public ownership and operation of the businesses of the grocer, the baker, and the candlestick maker. This is the socialism argument in a new dress. Of course, we may; municipal ownership may be the beginning of government ownership and operation of all productive agencies. But again, not necessarily. To reason from the light plant to the grocery store shows gross ignorance of their fundamental differences. The former performs a public function, the latter is essentially a private business.

IN the second place, let us review the usual stock criticisms by the private interests of municipal ownership. They may not be as hole-proof as we thought. Let us analyze a few of them, and see for ourselves.

It is often charged that municipal ownership violates the traditional scheme of government as laid down by the forefathers. Well, what of it? The forefathers may have been wrong.

Seriously, however, what was the scheme set up by the forefathers? No one can give a very satisfactory answer to that question. If that scheme contemplates a government adhering rigidly to the traditions of the past, then it should be violated. Life is a moving, dynamic thing, and government should accommodate itself to vital, social, and economic changes. In short, there is no traditional line of demarcation between things public and things private. Rather as was said above, it is a hazy

zone, and this zone is continually shifting.

Let us try another of the stock arguments. Municipal ownership is inefficient, unprogressive, subject to political pressure, and even graft. Evidence is then piled on evidence to prove this point. Well-known instances of graft and interference are cited. Rate comparisons are made, cases of obsolete equipment in public plants are given proper publicity.

THIS argument, however, is a two-edged sword. The recent exposés of scandals in the private electric light and power industry have been a bit embarrassing. I myself have contacted private plants enough to know that all inefficiency, incompetence, interference, and graft are not confined to the municipal plant. In short, what the private advocate labeled municipal shortcomings are human shortcomings and may exist everywhere.

While it may be true that the evidence is heavier on one side, or that the likelihood of their appearance is greater on one side than the other, these weaknesses inhere in people, and nothing short of eternal vigilance on the part of the public will ever eliminate them. In this connection a quotation from the *Electrical World* on the occasion of the release of the preliminary figures of the electrical census of 1932 is significant:

> These data, plus an understanding of the business, point to no discrediting facts for either private or municipal utilities. Both are doing the same work and both arrive at a balanced business position as a result of facing economic facts with the idea of developing and expanding their business.[1]

IN this connection, let us beware of rate comparisons because they serve only to fool the uninformed. Rates divorced from quality of service rendered, are meaningless. It often happens that a low rate for inferior service is actually higher than a high rate for good service. Then there is the question of operating conditions, load factors, and diversities.

Under any cost theory of rate making the variations in these factors from city to city will result in a variety of rates—all of which may be reasonable. Yet a rate comparison would make the higher rates appear extortionate. If all these factors be eliminated, there is still the variety of rate forms to be reconciled in making rate comparisons. To equate block, room, and Wright rates one must premise a given type of dwelling such as a 6-room house with a maximum demand of say 800 watts. Then this rate comparison applies to that assumed dwelling only; a 5-room

[1] Issue of December 23, 1933, pp. 801, 802.

¶ "THE *use of the revenue bond eliminates most if not all of the risk to the taxpayer that attaches to the use of general tax bonds as a means of financing a municipal plant. . . . Thus, if the proposed municipal plant project is of questionable value, the likelihood of finding a buyer of these bonds is slight.*"

house or a 6-room house with a 1,200-watt demand produces a very different rate comparison. So, for these and other reasons, let us forget the rate comparisons so often used by both sides of the municipal ownership controversy.

ANOTHER common argument against municipal ownership relates to taxation. It runs in two parts. On the one hand, the loss of taxes is cited as a reason against municipal ownership. On the other hand, the municipal plant is charged with increasing tax levies. How far will these charges hold water?

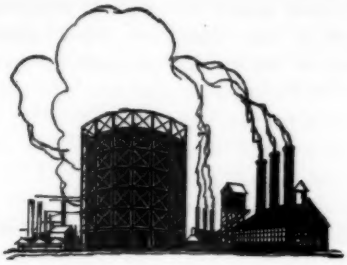
In so far as municipalization takes place, under our present laws, it does remove from the tax base that property affected, thereby shifting the tax burden of the former private utility to the shoulders of the remaining, and reduced, tax base. Thus, with a necessity for the same income as before municipalization, the tax burden will rise with the growth of municipal ownership. This does not condemn it, however. The people may so desire to do, and if so, who can object? Further, the utility passes all these taxes along in the rates charged, therefore with equal efficiency in municipal management the rates should be reduced by the amount of this tax bill formerly paid by private management. And lastly, it must not be forgotten that there is the possibility that laws may be altered to permit the taxation of municipal utilities at the same rates as business property. Such is the proposal now under consideration in several states.

WHAT of the charge that a municipal plant will raise taxes?

Concededly, such can only happen in the following ways: Payment of operating losses out of taxable funds, or indirectly by charging an exorbitant municipal lighting rate; or paying fixed charges such as interest or bond amortization, out of taxes. Does this happen, and how common is it? The answer is that it has and does happen. Either mismanagement or too low a rate results in losses which the taxpayer bears in his tax rates. Is this common? No one knows, but my guess is that glaring instances have been unduly magnified. Municipal ownership cannot be assured free from all risks, and these are some that must be faced.

The use of the revenue bond eliminates most if not all of the risk to the taxpayer that attaches to the use of general tax bonds as a means of financing a municipal plant. Several states have passed laws of this nature, and in them are very definite restrictions such as the maximum rate for service both to the city and to private users, and a definite prohibition of the use of tax funds to pay operating deficits, bond interest, or bond amortization. The municipal plant is placed on the same basis as a privately owned plant, the assets and earnings are the only security behind the obligations so issued. Thus, if the proposed municipal plant project is of questionable value, the likelihood of finding a buyer of these bonds is slight.

WITH the revival of the present wave of municipal ownership, a new argument against it has been created. The private side of the electrical industry has developed into systems serving both city and country,



Private Utilities Must Put Their House in Order

"THE future course of the municipal ownership movement lies not in the hands of the friends and advocates of the movement, but in the hands of the private interests. If they can but take a lesson from the experience of the railroads, they will put their house in order by putting into practice this highest type of public relations."

while the municipal plant has remained by and large an isolated plant confined to the city of its creation.

It is argued that the dismemberment of these systems through municipal ownership will leave the remaining units weakened and result in higher rates. Rural electrification is especially doomed to higher rates because of this dismemberment. What is the truth of this argument?

According to the fundamentals of constitutional and municipal law, a city can serve outside its own corporate limits only when specifically permitted by law to do so. In those states where no such permission for outside service exists, the municipal ownership movement will endanger rural service. This situation, however, is not impossible of correction, and in many states laws have been enacted permitting the municipal plant to serve rural and suburban customers. As a matter of fact, there are many rural customers attached to the municipal plants. According to the figures of the electrical census of 1932, they served 21,061 farms, or 4 per cent of the American farms electrified by the central station.

ONE cannot escape the suspicion that some of the rural service of the private electrical utilities has been rendered at less than the out-of-pocket costs involved. The drive for rural customers has been partly economic, partly political. In many cases, there can be no doubt that the rural load gained was profitable. In other cases, it would appear that the chief purpose was to secure the friendship of an essentially conservative group, the farmers. In case of impending legislation prejudicial to the

interests of the utilities, the potential strength of the farm class could be summoned to defeat it if this class were customers. I may be wrong in this conclusion, but I hardly see how it can be denied, the law permitting, that the manager of a municipal plant will serve all business that is profitable be it within or without the city limits. Why should he refuse to serve a farmer who is willing to pay a reasonable rate for service?

So we could go on presenting the many "proofs" of the fallacies of municipal ownership and likewise show the weaknesses of each argument. And it must not be supposed that the usual arguments of the municipal ownership advocate are less vulnerable. If lack of space did not forbid, we could point out flaws in their position as glaring as the ones found in the case against municipal ownership. We do not say that the arguments above presented do not have merit; they do but they do not prove the whole case by any means. They are not the fundamental factors at stake. Therefore, let us get down to these fundamentals.

No business should be a public one unless the three following circumstances are found to exist:

In the first place, the necessity for its service and the lack of possibility of its future replacement by another kind of business, should be present. These elements are found in the water industry; they are lacking in the street railway. So far as electricity is concerned, no one can safely say which its future resembles—the waterworks or the street railway. Therefore, until this question can be answered in the affirmative, it is better that the risk of the future be left in the hands of the private investor rather than transferred to the body politic.

In the next place, has the electrical industry "come of age?" In other words, has it grown up? If it has, then there is little risk of present processes and methods becoming shortly antiquated. If not, the danger of internal obsolescence is great. Which type of ownership will accommodate itself the easier to this changing technique? The evidence is in favor of private enterprise. Therefore, the best type of utility to be municipalized (other considerations aside) is one that is fully matured. Again, the waterworks fits our condition, while no one can yet predict whether the electrical utility has passed through the pioneer stage or not. Until there is certainty on this point, it is not ready for municipalization.

Lastly, can public ownership approximate the operating conditions of the privately owned companies? Again, the waterworks conforms to this fundamental. Taken by and large, and except for the great metropolitan areas, the economical operating unit is the area within the corporate limits. Not so for the electrical utility. It best operates as a system including many towns and the intervening countryside. It stands to reason that these system interconnections have material advantages over the isolated plant. Thus, so long as the municipal plant continues to be an isolated one it cannot approximate the system development of the electrical utility with its resulting economies.

¶ *"A* RECENT *legislative development, the power district, may be the answer to the problem of the interconnection of the municipal plant. In so far as areas such as controlled by the Tennessee Valley Authority and the power districts of the western states can be duplicated in other parts of the country . . . then the present economies of the private system might be approximated."*

A RECENT legislative development, the power district, may be the answer to the problem of the interconnection of the municipal plant. In so far as areas such as controlled by the Tennessee Valley Authority and the power districts of the western states can be duplicated in other parts of the country (and, of course, hydropower sites are not essential to the principle of the power district) then the present economies of the private system might be approximated.

So far, the defender of private ownership of the light and power industry is probably congratulating himself upon the obvious advantages of his side of the controversy. The electrical utility has the risk of replacement by a substitute service; it has a high degree of internal obsolescence, and it has operating conditions which cannot in most states be duplicated by the municipal plant. Our defender must wait, however, until he hears the fourth and *most important of these fundamentals.* How are the public relations of the private companies? But this question may only be answered by asking and answering another one, namely, what constitutes good public relations?

FIRST, let us see what good public relations are not. They are not a deluge of ballyhoo from the pen and lips of some highly paid publicity expert. This has too often been the type used by the private interests. Good public relations are not the maintenance of a far-flung propaganda system as, for instance, the several state and regional committees on public utility information. They do not consist in *sub-rosa* payments to unscrupulous politicians and others in return for promises of support on controversial issues. Nor are they the maintenance of a highly organized lobby bureau. In short these agencies and methods are of the soft-soap variety which are designed to throw dust in the eyes of the public, or to gain advantages through political pressure.

Real public relations are best gained by a policy which emphasizes the public trust side of utility service. It requires the placing of the public first in importance, and the relegating of the stockholder and management to second place. It requires an honest and fearless acceptance of public responsibilities regardless of cost. It means above-board coöperation with regulatory bodies, and a conciliatory spirit too often now absent. In short, good public relations means something far different than it meant to the utility executive who ordered from New York six bottles of Johnny Walker for the benefit of certain legislators.

It means something so different from much of the present kind of public relations that I suspect that most public relations experts will question my sanity. I have been in the midst of a hot municipal ownership campaign, and I can vouch for one thing: if this type of public relations I am calling for had existed here, there would have been no fight. As it is, not one single profession of faith by the private company will be accepted by the public as sincere.

With such a public relations policy as has been described, it becomes immaterial whether the other three fundamentals favor private or public ownership. The odds are in favor of an undisturbed possession of the field by private ownership. Conversely, bad public relations may force an enraged public to take over the utility business, though these same three fundamentals favor private ownership. It is not too much to say that in the last analysis, the one real fundamental at stake in the municipal ownership controversy is the social attitude of private management or, as it is better known, public relations. In extreme cases of unsocial management, it may be better to own a business publicly although the result may be higher rates, less rapid adjustment to the changing arts in the industry, and possible eventual loss of the entire investment.

The future course of the municipal ownership movement lies not in the hands of the friends and advocates of the movement, but in the hands of the private interests. If they can but take a lesson from the experience of the railroads, they will put their house in order by putting into practice this highest type of public relations. The housecleaning will not be painless because it will require the junking of old gods, the release or subordination of many present leaders, the reorganization of such structures as the holding company, and a new attitude toward regulation. Otherwise, the private interests are condemned to death, and the sooner the sentence is executed, the better.

Facts Worth Noting

The telegraph wire mileage in the United States represents 34 per cent of the world's total.

* *

The longest direct all-cable telephone circuits in the world are in the United States. They run from New York to Dallas, Tex., 1,850 miles.

* *

In 1933 preliminary estimates show that the manufactured gas utilities sold 340,000,000,000 cubic feet of gas to 9,700,000 customers for a total revenue of $380,000,000. This represents a decline compared to 1932, of 5 per cent in quantities of gas sold, 2 per cent in number of customers served, and 7½ per cent in revenue.

What Others Think

The Best Approach to Good Public Relations

IT is easy enough for the commercial concern, selling a tangible commodity such as soap or shoes or food or clothing, to build up public good will through the various forms of advertising backed by a quality of service that can be readily recognized and appreciated by the buying public. The intangible character of utility service, however, presents serious difficulty because the purchaser cannot visualize the quantity or the value of the service as he can see the things he buys from the retail store. Utility service is a commodity used throughout the month but the user has no definite visualization of what it represents. When the month has expired the "box of mystery, known as a meter" is read, and from this reading a bill is rendered. Here we have the makings of misunderstanding because the service is practically compulsory since the utility is generally a territorial monopoly.

HAVING this fundamental difficulty in mind, Addison B. Day, president and general manager of the Los Angeles Gas and Electric Corporation, writing in the *Executives Service Bulletin*, gives some specific hints on building customer good will from the standpoint of utility management. These hints are applicable to both publicly owned and privately owned utility plants.

Good public relations, in the opinion of Mr. Day, is something like charity in that it ought to begin at home. He stresses the importance of good employee relationships as a basis for good public relations generally. Mr. Day states:

> The basis of any program of good employee relations must necessarily be a square deal for the employee himself. Fair treatment, in the measurable relationships, such as hours, wages, and economic benefits, must be supplemented by fair treatment in the intangibles. The attitude and bearing of officials toward subordinates; the interest shown by the management in those matters of employee welfare not strictly within the responsibility of management; that intangible something that men feel but cannot define—all enter into the composition of employee relationship. Partly to secure this frame of mind, and probably in part because of it, a number of agencies of employee culture and good will have been established.

ONCE each month, except during the summer vacation, Mr. Day tells us that the principal executives and the departmental heads of his company meet at dinner with the president, on which occasions stated programs provide for the discussion of intimate matters of policy and management. These informal meetings tend to eradicate interdepartmental misunderstandings and jealousies. In addition his company sponsors an employees' association, managed entirely by employees, which furnishes outlet and direction for the social, recreational, and educational impulses and ambitions of utility employees.

During the fall semester the company enrolled 798 for "evening school" educational work. Special respect and deference is paid to old employees through an honorary group known as the "Old Guard."

Finally Mr. Day tells us of the uniform pension and benefit plan of his company by which provision is made for the retirement and disability of employees, which, he asserts, results in a

definite improvement in their morale.

Mr. Day's company also stresses the importance of courtesy training of employees. Mr. Day concludes that good customer relations depends in large part in giving employees a square deal.

PUBLIC utility commissions have also undertaken the task of smoothing out public relations between utilities and their patrons. The Massachusetts Department of Public Utilities has had considerable experience and success in handling large numbers of petty complaints by irate utility patrons. William H. O'Brien, chief of the telephone and telegraph bureau of the Massachusetts department, in a recent statement to the press concerning his work on public relations for a good part of his life, gives the benefit of his general conclusions on the subject:

> Human nature averages up just about the same. *Natural* human reactions vary but little in individuals, whether it be the humble laborer, the illiterate, or the college professor. Education is but a veneer and can never change basic human nature. In public relations work one must always have in mind that there are two sides to every problem. My long practical experience has taught me that ninety-five men and women out of every hundred are fair and reasonable if you lay your cards on the table, face up, tell the truth as you see the picture, avoid technicalities, never lose your temper, and you will have no trouble. Of the remaining five out of the hundred, there are three that you can finally convince they are unconsciously unreasonable, which leaves but two on whom time and effort are wasted because nature does stub its toe occasionally.
>
> During my service of nearly twenty-two years I have served under three commissions and have handled 30,000 complaints of every conceivable character concerning every ramification of telephone-telegraph business, and for over thirteen years, during which time we handled 21,000 cases there has not been a single appeal to the full board of commissioners. We have done our work through the years with the idea in mind that every time we helped the telephone or telegraph companies to do a better job, we were helping the business man with his bread and butter problems, with telephone service, the most vital artery of our industrial, financial, and social structure.
>
> We have handled our problems in a different manner than any other commission in the United States. Our work has been along practical lines, while all the other commissions have handled it almost wholly from an engineering standpoint, with everything formal. We have avoided all formalities, with no formal hearings except on rate petitions. Ours has been the "let's-sit-down-and-reason-together" policy. The work has been tremendously interesting with all its human aspects and, although officially soon retiring from state service, I shall never lose my interest in the various changes that will occur, and particularly in telephone service. The success of the department has been largely due to the fact that we have had the same personnel of inspectors, competent, practical men with unusual personalities, men that the state can well be proud of. It would be selfish of me if I did not testify to the fairness and the spirit of coöperation on the part of those representing the telephone and telegraph companies with whom we have dealt during all these years. In all the thousands of cases I do not recall a single instance where they didn't play fair in their relations with us. And as for the various commissions under which I have served, they have all been the same fine, splendid men to work with, simply advising that you use your best judgment, keeping in mind at all times the thought with which I opened this story: There are two sides to every problem.

HOWEVER, in these days when utility activities have become so linked with governmental activities, it may be necessary for the utilities to do more than render good service at reasonable rates and explain the same to their patrons. There may come a time when a utility in self-defense must explain its position with respect to political issues involving utilities. That is the opinion of Floyd W. Parsons, writing in the *Gas Age-Record*. He said:

> If we are going to win the confidence and respect of the public we must nail every false accusation instantly. The public likes a fighter if it knows he's a square shooter. It is suspicious of those who surrender without a battle and it feels they are not worth helping.

Publicly owned plants likewise are beginning to feel the necessity for building of good customer relations. In the course of greater competition between

the two forms of utility management (public and private), it will be necessary for both types to win the confidence of their patrons if they are to survive.

—F. X. W.

BUILDING CUSTOMER GOODWILL. By Addison B. Day. *Executives Service Bulletin.* July, 1934.

BUILDING PUBLIC CONFIDENCE THROUGH UTILITY ADVERTISING—II. By Floyd W. Parsons. *Gas Age-Record.* June 30, 1934.

Barristers Discuss Bureaucrats

AMONG the many religious ceremonies held in Tibet each year, the most amusing is "driving out the demon." It is a dice-throwing contest between two men, one dressed as the Grand Lama, the other as the demon. As the demon's victory would portend disaster to the country, the Grand Lama plays safe—with loaded dice.

Loading the dice or, to use the more accepted allegory, tipping the scales of justice, may be acceptable if everyone is sure that the scales are tipped in the right direction. In the Tibetan ritual there is a unanimity of public opinion as to which side should win, and so there is no great opposition to making the outcome certain by means which might be called unfair under other circumstances. But when a man is charged with a wrongdoing, it has always been the American tradition to insist that he be tried before a disinterested judge and jury. If he is convicted and punished, the people are satisfied that justice has been done.

What would we say, however, if the state, acting through its district attorney, not only insisted upon prosecuting the individual charged with wrongdoing, but also in trying the case and rendering the verdict. Would that not be something like the Tibetan ritual without the Tibetan's admitted justification of subject matter?

WHEN the American Bar Association meets at its regular convention in Milwaukee at the end of August, it will have before it a report dealing with an important problem of government, presented by a special committee on administrative law. In substance the committee declares that all judicial functions should be completely severed from the administrative tribunals of the Federal government.

Conceding that the modern necessity of government in business required a certain amount of delegation of power to the executive, the report confines itself primarily to the exercising of judicial power by administrative agencies. The report raised special objections to the authorization of the executive to create at will or to discontinue administrative agencies. It professed the belief that rapid growth of independent commissions and executive agencies which exercise in some instances judicial and legislative powers, seriously undermines the judicial branch of the Federal government.

The report represents the work of a group of eminent lawyers consisting of Chairman Louis G. Caldwell, of Washington; Dr. Felix Frankfurter, of Harvard (not a signer of the final report); Thomas B. Gay, of Richmond; O. R. McGuire, of Clarendon, Va., and Charles B. Rugg, of Boston.

WHILE not in so many words aimed at certain phases of the New Deal, the report pointed out that under Title I of the National Recovery Act thirteen agencies and four corporations have already been created by executive order. A lawyer in continuous contact with these agencies in Washington, the report continued, can find his way through the maze only with great difficulty, while lawyers practicing elsewhere are at a loss to advise clients and "it becomes hopeless for the average citizen

to attempt to understand his government."

The NRA was a particular target of the committee's warning against rampant bureaucracy. It is estimated that the NRA in one year has issued 10,000 or more pages of pronouncements, supposedly having "all the force and effect of Federal statutes"—the total of which, however, exceeds the volume of all Federal statutes. It is calculated that the legislative output of other Federal administrative agencies exceeds in volume all Federal statutes enacted since 1789—the date the Constitution was ratified.

"Administrative" agencies, as pointed out in the committee's report, were defined as agencies to which Congress has delegated legislative or judicial powers and includes so-called independent commissions, various bureaus and agencies created by executive order.

As a corrective measure, the committee report suggested first that judicial functions of the administrative agencies should be divorced from their legislative and executive functions and should be placed either under a Federal administrative board or an appropriate independent tribunal modeled after the board of tax appeals. The second conclusion of the committee recommended the abolition of all independent commissions and the transfer of their legislative and executive, but not their judicial, functions to one or the other of the ten executive departments of the Federal government.

A third conclusion enumerates needed reforms in existing administrative machinery, among them the collection in some central and available office of the great mass of orders, rules, and regulations having the effect of law and the registration and publication of the same before they become effective. The committee stated:

> Enthusiasm for attractive experiments in the substantive field of law, designed to accomplish great social and economic purposes, should not be permitted to carry, like riders to an appropriation bill, disastrous and futile experiments in the machinery for making laws or for administering justice. Further experimentation hardly seems necessary, for example, with the maxim that a man should not be judge in his own cause, or with the elementary requirements of due process of law with respect to notice and hearing before an adjudication is made affecting the rights of an individual.

Stressing the necessity for a clean-cut distinction between judicial and administrative functions, the committee's report concluded:

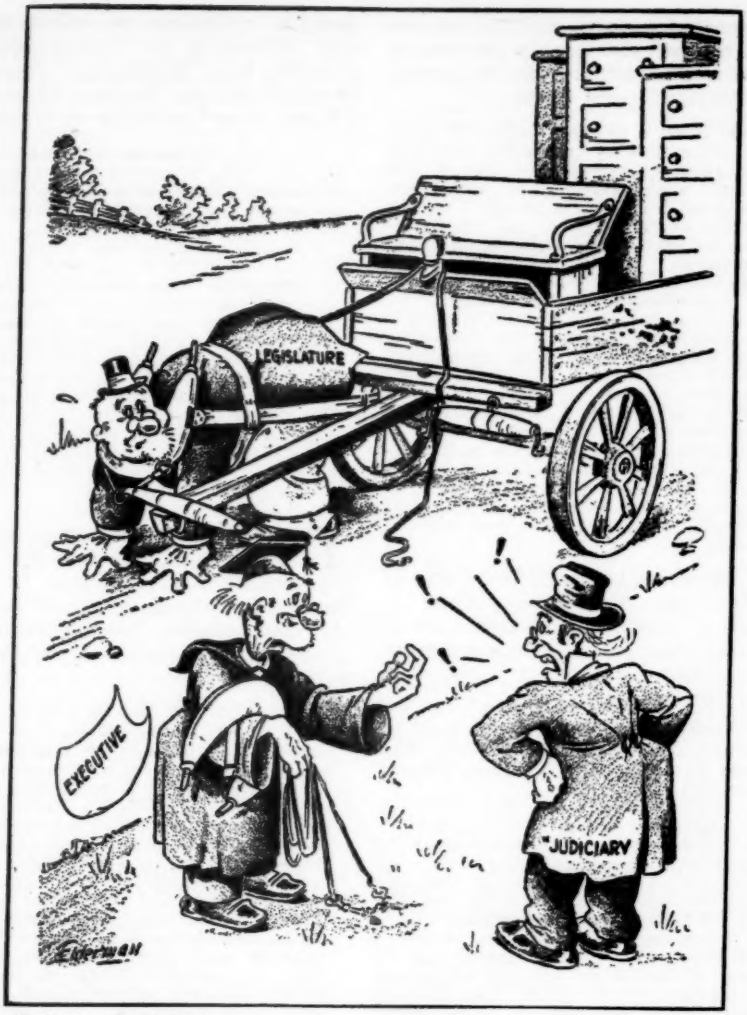
> Administrative tribunals with judicial power are courts in fact; without adequate judicial review of their decisions they are, potentially at least, courts controlled by the executive or by the legislature. To the extent that courts are permitted to fall under such control poignant lessons of history have been forgotten and a fundamental condition to the administration of justice, *i. e.*, the principle of judicial independence, has been sacrificed.

Both the conservative and liberal press appeared to believe that the Bar Association's report is a timely warning against the encroachment by administrative bureaucracy upon the field of the judiciary. The conservative *Washington* (D. C.) *Post*, organ of the Republican party, stated:

> The committee has done an especially useful service in emphasizing the powerlessness of the individual to protect his constitutionally guaranteed rights, when the mass of laws and of regulations having the force of law is too complex to be understood. Simplification of the machinery of government is recommended, such as a transfer of independent agencies to the main executive departments of government and changes designed to deprive Federal administrative bodies of judicial powers. These reforms, however, are admittedly matters for future determination. The immediate value of the report lies in its unemotional and expert analysis of trends which must be reversed if the rights of the citizens are not to be "nullified in practice," by subjection of the courts to the control of administrative tribunals armed with judicial power.

The more liberal *Columbus* (Ohio) *Dispatch* observed that it did not require a board of lawyers to make such a finding, but added:

> Increasing complexity of government anyone will admit makes necessary a certain number of administrative bodies to en-



Washington (D. C.) Post

WHO, ME?

force its decrees. But customarily in the past their findings have been liable to court review and not final. This avenue of escape from the authority of bureaucracy, however, is to be closed, if possible, by gradually usurping legal authority, unless the courts and lawyers resist it which it may be hoped in the interest of all, they will. To have a pusillanimous and rubber stamp Congress is enough, but the prospect of a weakened judicial system is infinitely worse.

WRITING in the Hearst papers, Richard Washburn Child, formerly United States Ambassador to Italy, assails the inefficiency of governmental bureaucracy as a natural result and deplores the possibility that such

people (bureaucrats) and their inefficient methods are steadily growing in power and prevalence under the present administration. He stated:

> The invasion of homes and businesses to get information by compulsion and issue regulations to run private lives is bad enough when conducted by genius and demigods; it is irksome, indeed, when carried on by those who do not measure up with the fact or philosophy of an honest doorkeeper.
>
> Prohibition indicated to everyone that when government goes into regulatory commandments instead of laws lawfully enacted, it is to the interest of the bureaucracy to multiply regulations. That is the BUSINESS of bureaucracy. It either makes bureaucracy important or gives the corrupt ones a chance to bring accusations and ask for tips or favors to suppress inquiry.
>
> But even when bureaucracy is honest—and old Europe who has carried bureaucracies so long says honesty under bureaucracy is impossible—it is a tyrant. It's the old, old story of little men with big power.

Government bureaus have a way of perpetuating themselves. There is quite a commonplace expression in Washington, D. C.: "Once a bureaucrat, always a bureaucrat." Mr. Child stated on this point:

> Finally when "emergency" is over you will not find any man like this or the hundred of thousands of little tsars going to Congress to say:
>
> "Well, the job is done. Here is my resignation. And do I get a pension now?"
>
> You will not hear the chairman of the party in power saying,
>
> "Let's fire these boys though with their families and friends, it will cost us a million or two votes and the election."
>
> A bureaucracy so far as the taxpayer is concerned, when it grows larger than the body of faithful and necessary and trained and underpaid WORKERS, is an abscessed tooth which won't come out. The swelling is greater, the pain sharper by the minute. All the dentists, from presidents down, charge by the hour to look at it and have new bureaucrats stand by to see if something can be done to bureaucracy. And the sole answer is "More filling."

CONCERNING the invasion of private business by government, Chairman Frank R. McNinch, of the Federal Power Commission, does not appear to be as disturbed as he is about the invasion of government in private business. Hitting at the "vicious practice of having 'kept' legislators," Chairman McNinch told the Institute of Public Affairs of the University of Virginia:

> For years we have had occasional shocking and shameful revelations of individual lawmakers, administrative officials, and others in positions of public trust being subsidized by public utility money.
>
> Some utility leaders have piously posed as great defenders of constitutional government, while at the same time setting up this extraconstitutional and vicious practice of having "kept" legislators do their bidding in violation of constitutional duty.
>
> The growth of publicly owned projects has been condemned by some as an unwarranted invasion of industry by government. But even if this should lead to the fulfillment of the gloomiest predictions of opponents, it will not be comparable in social significance to the invasion of government by the power industry.

THE *Wall Street Journal* apparently approves of the American Bar Association's report, because it feels that the bureaucratic jumble of judicial and administrative powers necessarily results in unfairness. The *Journal* stated editorially:

> Few people will disagree with this view for it is tantamount to saying that no one should sit as a judge in a trial in which he has an interest. So far is this view carried in legal trials that it is held a man should not go into the jury box who has expressed opinions on the merits of the case to be tried. Yet there has grown up in our government a system by which administrative commissions or tribunals make rules and regulations that have the effect of law and then proceed to execute them and afterwards, in some instances, proceed to pass judgment upon alleged violations thereof. Thus one tribunal exercises the functions of the legislative, executive, and judicial branches of government.

The *St. Louis Globe Democrat* takes a similar view, feeling that the growing power of bureaucracy is too much dominated by administrative leadership. It stated editorially:

> Moreover, the officials exercising judicial functions in such agencies of government are in most instances appointees of the executives, and their tenure of office is limited by his disposition. They are therefore more or less subject to his influence,

and their decisions are likely to be more or less affected by that influence. It is a question of tremendous importance that has been raised by this committee of the American Bar Association, one that cannot be safely dismissed with a shrug, but one that should command the earnest consideration of the bar and of Congress.

It is safe to predict, however, that the Bar Association's recommendations, particularly that specific recommendation which has to do with immediately cutting off the heads of all independent commissions, will not be carried out—at least during this prevailing administration and probably for a number of administrations to come.

Among the many other mean things that can be said of bureaucracy is that it suspiciously resembles the Old Man of the Sea. When it once gets a strangle hold, it is impossible to dislodge.

—F. X. W.

REPORT OF SPECIAL COMMITTEE ON ADMINISTRATIVE LAW. American Bar Association. July 15, 1934.

SUBORDINATING THE JUDICIARY. Editorial. *Washington Post.* July 17, 1934.

WEAKENING THE JUDICIARY. Editorial *Columbus Dispatch.* July 18, 1934.

GOVERNMENT BY BUREAUCRACY. By Richard Washburn Child. *The Washington Herald.* July 17, 1934.

ADDRESS by Frank R. McNinch before the Institute of Public Affairs. University of Virginia. July 11, 1934.

ENCROACHING ON THE COURTS. Editorial. *The Wall Street Journal.* July 19, 1934.

BAR RAISES A GREAT QUESTION. Editorial. *St. Louis Globe Democrat.* July 18, 1934.

Cincinnati Offers a Solution for Rate Reduction Agitation

Ever since the accumulating pressure of adverse economic conditions thrust the American public into a veritable sea of financial troubles, the utilities, particularly the power utilities, have witnessed a steady increase in public clamor for rate reductions.

Some utility operators have declared that the demands of hard-pressed Average Citizens are insatiable. Repeatedly have rate reductions been made by voluntary concession, by commission order, and more frequently of late by threat of public competition. Today a great many power utilities have reached the point where they feel they can go no further in granting rate reductions. Still the tide of rate agitation has not perceptibly receded.

The reason why a great many utilities feel that they have made the last possible concession is found in the dark shadow of inflation, which becomes daily a more ominous possibility.

It has been pointed out a number of times in these pages why inflation is a particular bugaboo for utilities, whether they are privately or publicly owned and operated—namely, an abrupt drop in the value of our monetary unit would surely grind the utilities between the upper and nether grindstones of increased operating expenses and fixed operating revenues respectively.

For this reason it can be readily appreciated that a number of utilities would be glad to quiet the public agitation for rate reduction by further concessions if they could be assured lasting protection against this specter of monetary inflation.

That is why the recent compromise between the city of Cincinnati and the Union Gas & Electric Company in that city is of much more than local significance. It suggests a solution, if indeed it does not afford a model, whereby the demands of the public can be met while at the same time protection of the utilities against possible inflation is assured.

City and company officials worked out a total of nine million dollars basic rate reduction for all classes of electric

rate consumers within the next four years, but these rates are based on present costs. The ordinance, however, provides for adjustments if the company's costs in respect to coal, wages, or hours of employment are increased due to additional taxes, code rulings, or governmental regulations or impositions. Conversely, if the company's costs decrease through the repeal of present taxes and regulations, the rates may likewise be adjusted downward.

SECTION 6 of the ordinance, which provides the protection against rising costs, reads as follows:

> "Regulations" as used in this section shall mean such regulations imposed on the company by the general assembly or officers of the state of Ohio or by the Congress or officers of the United States or by code or other authority under authorization of the state of Ohio or the United States, by reason of which the costs to the company are affected with respect to coal, wages, and hours of employment.
>
> The rate schedules herein are based on the costs prevailing on the effective date of this ordinance which include costs by reason of taxes levied and regulations imposed by governmental authorities. Some such taxes and regulations now levied and imposed may be temporary, and other taxes may be levied and regulations imposed which may also be temporary. In case any such taxes now or hereafter levied, or any such regulations now or hereafter imposed, may be repealed during the term of this ordinance, decreases in the within schedules shall be made as hereinafter provided. In case any such new and additional taxes may be levied, or any such new and additional regulations may be imposed during the term of this ordinance, increases in the within schedules shall be made as hereinafter provided.
>
> Such decrease or increase in said schedules shall not be made unless any or all such taxes repealed or levied, and any or all such regulations repealed or imposed affect such costs to the extent of $200,000 within twelve months from date of repeal or imposition. Said sum of $200,000 shall be the proportionate part allotted to the city of Cincinnati of the total amount so repealed, or so levied or imposed on the entire property used and useful of the company, or on the entire business of the company, within and without the city of Cincinnati.
>
> Upon the repeal or levying of any such taxes, or the repeal or imposition of any such regulation, whether it amounts to said sum of $200,000 or not, it shall be the duty of the company to file with the council of the city of Cincinnati a statement advising of such repeal or imposition or levy and showing to what extent it affects the costs of the company as a whole, and the proportionate amount allottable to the city of Cincinnati.
>
> If the company claims such amount allotable to the city of Cincinnati amounts to $200,000 or more, the company shall file with such statement an application for a decrease or increase of said schedules supported by affidavits to be signed by an executive officer authorized by its board of directors, setting forth the necessary detail to sustain said application, together with new schedules which the company recommends to accomplish such decrease or increase.
>
> Upon the repeal or imposition of any such tax or any such regulation which amounts to said sum of $200,000, and the director of public utilities so finds, it shall be the duty of the director of public utilities, through the city manager, to file with the council of the city of Cincinnati, a statement advising of such repeal or imposition and setting forth new schedules which he recommends to accomplish such decrease or increase.
>
> The director of public utilities of the city of Cincinnati shall at all times have the right to require of the company sworn statements with respect to any increases or decreases of operating cost claimed by either party, with the further right of access to the records of the company for the purpose of verification of the same.
>
> In the event an increase in fuel cost is claimed by the company, the same shall be substantiated by affidavits showing the same, with copies of any contracts, orders, or invoices, if required by such director, and the director shall have access to the books and records of the company for the purpose of verifying the same.

It is to be noted that monetary inflation, probably uppermost in the minds of the negotiating officials, was not once mentioned in the above-quoted passage. Protection against inflation is indirect but none the less effective. For example, a decrease in the purchasing power of the dollar from 60 to 30 cents (gold base of 1932) would automatically result in demands for increased wages as well as increased prices and supplies, materials, and equipment. This would appear on the company's books under the head of increased operating costs, already described as prop-

er elements to be considered in applying the reciprocal adjustment clause.

An important factor which a New York economist (who prefers to remain anonymous) pointed out in the Cincinnati negotiation was the fact that both company officials and city officials were able to satisfy their own particular purposes. To be more specific, company officials require protection over a long range against destructive results that would follow drastic or abrupt monetary inflation. On the other hand, city officials in order to point out as political achievements, reductions actually made effective during their existing term in office, are not concerned about the long range as much as they are about securing credit for immediate rate reductions.

The Cincinnati ordinance is apparently a satisfactory compromise of both desires.

It is not unlikely that utilities elsewhere and in similar circumstances will find politicians who champion rate reduction movements quite willing to exchange long-range protection against rising operating costs for immediate concession by way of rate reductions.

—F. X. W.

Franchise Ordinance for the Union Gas & Electric Company, Passed by the City Council of Cincinnati, Ohio. July 11, 1934.

Can State Commissions Regulate Federal Utilities?

A number of years ago during the preliminary discussion of the possibility of the government operating the power plant at Muscle Shoals, lawyers were confronted with an apparently new legal problem: Would the Federal government operating a utility business in Alabama be subject to the sovereign right of the state to regulate utility operations within its borders, or would the state have no power to regulate the rates, service, securities, or other utility aspects of an operating agency of the superior Federal government?

When the Tennessee Valley Authority began to make contracts with private utilities concerning the interexchange of power and transfer of property, and, among other things, the fixing of wholesale and retail electric rates, both the Tennessee and Alabama commissions sidestepped the issue without sacrificing the sovereign rights of their respective states. They did this by inserting a little clause in their orders approving the proposed contracts which purported to reserve to these commissions the right to revise contract rates at any time that public convenience and necessity required a revision of such agreements.

More recently, however, a situation arose which required the Alabama commission to face the issue, and it did so without hesitation. It appeared that certain Alabama coal and ice concerns protesting against the approval of contracts between the Tennessee Valley Authority and the Alabama Power Company raised the question of whether the TVA is or is not a "utility" subject to regulation under the laws of Alabama. Although the commission subsequently dismissed the protesting petition upon its merits, it decided to take jurisdiction on the theory that TVA is a utility operating subject to Alabama's general regulatory laws. Following this the commission ordered the TVA to file with it a schedule of rates and regulations affecting its utility operations within the state of Alabama.

The action of the Alabama commission evoked almost unanimous support of the Alabama press. The *Montgomery Advertiser* stated:

The Alabama Public Service Commission takes the high, broad ground that the people most concerned should, through their local agencies, bring such an agency of the public service under effective public control; and accordingly the Alabama commission has ordered the TVA to file with it a schedule of its rates and services.

Here, plainly, is announcement by a sovereign state of its purpose to regulate an agency of the Federal government.

While in these new days the Federal government is all powerful in fact, another primary fact remains to be accounted for in theory—it is that the state, not the Federal government, is sovereign; and in this instance when the Federal government becomes a bidder for the patronage of Alabamians who are dependent upon public utilities, that agency must submit to local regulation. . . .

With reference to the position of the Alabama commission, while the issue of law is yet to be determined by the courts, the principle would seem to be this: Those who judge should be disinterested. Naturally and inescapably the Federal government could not be disinterested in a cause against the people where one of its own agencies is a party to the suit.

The Federal government could not properly adjudicate an issue between citizens of Alabama and the thrifty, ambitious operators of the TVA whose primary interest is to make a good showing in its reports.

The public service commission of Alabama manifestly would be the least interested of all agencies in determining the merits of a controversy between consumers of Federal service and commodities and the Federal government.

THE *Birmingham News* likewise supported the commission's position.

This paper pointed out that President Roosevelt himself, in his letter to Secretary Ickes outlining his plans for the establishment of a national power committee, stated:

> Since a number of states have commissions having jurisdiction over intrastate power matters, it is necessary that whatever plan is developed should have regard to the powers of these various state commissions as well as of the states in general.

The *Birmingham News* concluded:

> This must be regarded as a signal recognition by the head of the Federal government of the principle of state's rights, as it relates to national development of power resources. Since the Federal government is embarked on a large-scale program of power development, it is well to have this issue raised and settled now. No doubt it will finally have to be passed on by the courts. The fact that it has been raised by the Alabama Public Service Commission attests to the alertness of that body. And the fact that the President of the United States takes a position which apparently supports that of the commission attests to the soundness of its judgment.

IT is not likely that such a fundamental legal point will rest with the decision of the Alabama commission. But the support already indicated for the position which the commission has taken is evidence that the courts will have to give earnest consideration to the sovereign rights of states to regulate all utility operations whether by public or private bodies.

—F. X. W.

EDITORIAL. *The Montgomery Advertiser.* July 16, 1934.

RAISING AN ISSUE OF FUNDAMENTAL IMPORTANCE. Editorial. *Birmingham News.* July 17, 1934.

In the Coming Issue

"Effect of Economic Changes on the 'Fair' Return for Utilities"

BY ELLSWORTH NICHOLS

"Regulation A La Mussolini"

BY MARSHALL T. JONES

The March of Events

Roosevelt Appoints National Power Policy Committee

PRESIDENT ROOSEVELT, acting by wireless during his vacation cruise to Hawaii, approved creation of a special committee to define a national power policy and see that electricity is available to every one at the lowest costs, according to the *Associated Press.*

Harold L. Ickes, Secretary of the Interior and Administrator of Public Works, is chairman of the new committee. The other members are Morris Llewellyn Cooke, chairman of the PWA Mississippi Valley Committee; Robert E. Healy, member of the new Securities and Exchange Commission, former general counsel of the Federal Trade Commission and in charge of the 6-year utility investigation; David E. Lilienthal, power director of the Tennessee Valley Authority; Frank R. McNinch, chairman of the Federal Power Commission; Dr. Elwood Mead, director of the Bureau of Reclamation (Interior Department); T. W. Norcross, head of the engineering branch of the U. S. Forest Service (Department of Agriculture), and Major General Edward M. Markham, Chief of Engineers, War Department.

The committee is charged directly with preparing legislation for the next Congress to better regulate the flow of electrical energy in interstate commerce.

Subcommittees in six fields were named by Chairman Ickes at the first meeting of the committee, according to the *Washington* (D. C.) *Evening Star.* Cooke, Major General Markham, and McNinch were designated to outline a plan of action and suggest the personnel set-up. Cooke, who was named vice chairman, also will head the subcommittee to study rate standardization. A subcommittee under Lilienthal will look into unification of supply.

Other subcommittees and their heads are: Regulation of holding companies, Healy; government purchase of power, Markham; hydroelectric supply and its connotation, McNinch; rural electrification, Norcross; coöperation with state commissions, Dr. Mead.

Chairman Ickes said the committee would draw on government experts for service and on studies and surveys made or now being carried on by Federal agencies.

President Roosevelt, in writing to Secretary Ickes about the purposes of the new committee, said:

"I wish to establish in the Public Works Administration a committee to be called the 'national power policy committee.' Its duty will be to develop a plan for the closer coöperation of the several factors in our electrical power supply—both public and private—whereby national policy in power matters may be unified and electricity be made more broadly available at cheaper rates to industry, to domestic, and particularly, to agricultural consumers."

New Federal Commission Orders Data on Wire Rates

GETTING ready for its study into the reasonableness of telephone rates, the newly set-up Federal Communications Commission has issued an order to all telephone companies doing interstate business to file with it not later than September 1st a mass of data relating to rates and to interlocking directorships or other affiliations with companies manufacturing telephone equipment and with other communications companies, according to the *Washington* (D. C.) *Evening Star.*

Compliance with the order for data will give the communications commission full information about the operations of the American Telephone and Telegraph Company, which handles by far the greater part of the country's telephone service.

The orders include companies operating within one state that are in any way hooked up with interstate companies.

Following the lead of the commission's telephone unit, the telegraph division ordered telegraph companies by September 15th to submit copies of contracts with other carriers, and a cross section of their corporate and stock connections.

Preliminary to the commission's study of merger possibilities in the telegraph field, involving Western Union, now controlling 75 per cent of the telegraph business, and Postal Telegraph, 24 per cent, the division asked full information of the record wire financial set-up. The International Telephone & Telegraph Company was among those queried.

Attacks Utility Investors

THE Federal Trade Commission and other governmental agencies have received a petition, according to *The Wall Street Journal,* from the San Antonio Utilities League urging an investigation by the Federal Power Commission and Federal Communications Commission with a view to possible reduction of utilities rates, particularly directing

attention to alleged unlawful activities of the American Federation of Utility Investors.

Pointing out that there is no state regulation of telephone or electric rates in the state of Texas, the San Antonio Utilities League alleged that the American Federation of Utility Investors was engaged in organizing the owners of utilities securities, opposing rate reductions, publicly owned hydro projects, and Federal financing of public plants.

The petition further alleged that the federation is a foreign group doing business in Texas without local authority and engaged in soliciting funds for political purposes in contravention of state and Federal statutes.

To Study Municipal Law

A COMMITTEE on the law of municipal corporations appointed by the last meeting of the American Bar Association has prepared a program for the meeting of the Association at Milwaukee, Wis., starting August 27th.

Members of the committee are Charles W. Tooke, Chairman, New York, N. Y., Henry P. Chandler, Chicago, Ill., Harvey H. Bundy, Boston Mass., L. Arnold Frye, New York, N. Y., Walter Chandler, Memphis, Tenn.

The program to be commenced on August 27th will consider: (1) "Legal Problems Affecting the Non-Federal Phases of the Public Works Program," including a paper by Frederick Wiener of the Federal Emergency Administration, Washington, D. C., followed by a discussion led by Benjamin F. Langworthy, of Chicago, Ill., and Henry Epstein, solicitor general of the state of New York; (2) "State Receiverships of Municipal Corporations," including a paper by Henry F. Long, state commissioner of corporations and taxation, Boston, Mass., followed by a discussion led by David M. Wood, of New York, N. Y., and Joseph E. Warner, attorney general of Massachusetts, Boston, Mass., and Cornelius Lynde, Chicago, Ill.; (3) "Immunity of Municipal Corporations from Tort Liability," including a paper by Dr. Edwin M. Borchard, of Yale University, New Haven, Conn., followed by a discussion led by Ambrose Fuller, of Minneapolis, Minn., and Dr. Leon T. David, University of Southern California, Los Angeles, Cal.

Alabama

Protest TVA Power Sale

A PETITION asking the public service commission to set aside its orders approving the sale of properties of the Alabama Power Company to the Tennessee Valley Authority has been filed with the commission by coal and ice companies of the state seeking to revent the transfer.

The petition was based on the order of the utility regulatory body, which sought to have the TVA file a schedule of rates and regulations within thirty days from the date of the order on July 14th, and named as plaintiffs the Aetna Coal Company, the Central Ice Company, et al.

The plaintiffs took the position that if the TVA is a utility, then the regulatory body should not approve the transfer of the properties in question, all located in North Alabama, until the Federal agency has complied with the order of July 14th.

Florence Joins TVA Units

FOLLOWING a mass meeting of its citizens, the city of Florence, situated within the shadow of Muscle Shoals, has decided to accept the plan of the Tennessee Valley Authority to purchase the privately owned electric distribution property in the city of Florence and to resell it to the city on easy terms.

As a result all of the thirteen northwest Alabama towns have now accepted Tennessee Valley Authority's plan for purchase of existing facilities.

Florence had previously sought a Public Works Administration loan to construct its own plant or to purchase existing facilities of the Alabama Power Company, according to the *Nashville Banner*, but the PWA informed the city that loans for reconditioning plants or purchasing existing plants could not be approved.

Colorado

Lower Telephone Rates Are Negotiated

MR. E. E. WHEELER, chairman of the public utilities commission, has announced the successful termination of negotiations which the commission has carried on with the Mountain States Telephone and Telegraph Company, resulting in reductions in certain telephone rates and charges.

The changes, which were to become ef-

fective August 1st, eliminate the additional charge on desk-stand telephone equipment in connection with rural service and where such a charge has formerly been made. No charge has been made for desk-stand telephone equipment on one and two-party service. The standard equipment on rural and four-party has been confined to wall-type instruments because of low rates under which these classes of service were furnished. The change extends the privilege hereafter of desk-stand equipment with no additional charge to four-party and rural telephone users where this type of equipment is desired.

The order also reduces rates on main-line residence extension telephones to 50 cents per month and the charge for business main-line extension service to $1 per month in all cases where the charge has been in excess of these amounts.

The telephone company officials contend that the company's earnings do not justify the annual revenue loss of $18,000 which results from the changes in question, but has agreed to accept the order without further protest.

Approximately 4,000 telephone users in the state are affected through these changes. The Mountain States Company announces that it will give the same consideration to the rate schedules in home rule cities, where they are affected.

District of Columbia

PUC Plans Phone Revaluations

A DRIVE for deeper reductions in telephone rates was launched on a new front by the public utilities commission recently when it announced intention of making a valuation of the Chesapeake and Potomac Telephone Company's properties and formally sought the coöperation of the recently created Federal Communications Commission, according to the *Washington* (D. C.) *Herald*.

Riley E. Elgen, chairman of the local commission, stated in a letter to the national commission he believes a revaluation of the company's properties will result in a material decrease in the figure upon which Washington rates are now based and upon which subscribers must yield a substantial dividend.

Regardless of whether the communications commission participates in the revaluation, it will be made, according to Chairman Elgen. However, he believes money and time can be saved if the two commissions work together, thus obviating duplication of effort.

Georgia

ICC Probes Rail Rate Cut

THE Interstate Commerce Commission has ordered an investigation of the intrastate railroad passenger fares in Georgia placed in effect on order of the public service commission, according to the *Atlanta Constitution*. Chairman Jud P. Wilhoit, of the commission, immediately attacked the inquiry charging the action of the ICC "as heroic as was the action of Nero in fiddling while Rome burned."

The ICC order was issued after the commission had before it for several weeks the protest of the railroads that the 2-cent maximum passenger fare was "prejudicial." Georgia is the only state in the Union in which both Pullman and day coach passenger fares are fixed at a maximum of 2 cents. The 2-cent rate is effective in day coaches generally, but the Pullman fare elsewhere is 3 cents per mile and upward.

The Interstate Commerce Commission ordered the inquiry in Washington on its own motion, although railroads operating in Georgia had complained on April 21st that an order of the Georgia commission was improper and prejudicial to interstate travel.

Rate Cases Enter State Court

FOLLOWING a refusal of a 3-judge Federal court to enjoin a 17 per cent rate reduction ordered for nine independent telephone companies by the public service commission on ground that the court had no jurisdiction because of the recent enactment of the so-called Johnson Act, the Georgia Continental Company, leader in the rate controversy, went into Fulton county superior court in an attempt to obtain relief from the alleged confiscatory result of the state commission's order, according to the *Atlanta Constitution*.

Judge Virlyn B. Moore first granted a temporary stay of enforcement of the commission's orders but later dissolved the restraint, following an agreement among counsel for an early hearing.

Attorney J. Prince Webster, appearing for

the remaining eight independent telephone companies, subsequently joined with the Georgia Continental Company.

Athens Seeks TVA Power

A CITIZEN'S mass meeting called to protest discontinuance of bus service in Athens by the Georgia Power Company, adopted resolutions requesting city authorities to negotiate with the Tennessee Valley Authority for municipal power, and to make application for a public works loan to build a distribution system, according to the *Atlanta Constitution.*

The meeting which had an estimated attendance of 300, also passed a resolution asking the city council to require the power company to restore street car service, abandoned in 1930, or declare all franchises of the utility in Athens forfeited. The mayor and council were requested to file a petition to that effect with the public service commission.

Illinois

Utilities Must Pay Sales Tax

GAS and light, as dispensed by public utilities, are "tangible property," and as such are subject to the state retailers' 2 per cent occupational tax (the sales tax), Judge Harry M. Fisher ruled recently in the circuit court, Chicago, according to the *Chicago Daily Tribune.*

If this ruling, which came at the end of a series of hearings begun last autumn, is upheld by the Illinois Supreme Court, it will mean that the state treasury will receive between $4,000,000 and $5,000,000 a year from gas and electric companies.

The ruling was made in the cases of the Commonwealth Edison Company, the Peoples Gas, Light and Coke Company, and the Central Illinois Public Service Company, but if upheld it will affect all other public utility companies which sell gas and light in the state of Illinois.

Kansas

Light Rate Cut in 110 Towns

THE United Power & Light Company of Abilene has filed with the corporation commission a schedule of reductions in electric rates in 110 small communities in central Kansas, according to a statement in *The Topeka State Journal.* The rate cuts will save the patrons substantially $300,000, according to an analysis by the company's experts.

In addition to the rate reductions the company proposes modification of penalty charges on delinquent payment of monthly bills. The new rates make their second step reduction from 6 to 5 cents a kilowatt hour in the general change, although in some cases the existing rate is 5½ cents. A 9-cent 30-kilowatt hour monthly consumption rate is provided.

Kentucky

New Commission Begins Work

THE newly appointed public service commission—Wilbur K. Miller, lawyer, chairman, William D. Cochran, lawyer, and Lloyd Clark, former deputy banking commissioner—has granted to Junction City and Versailles certificates of public necessity and convenience to enable them to proceed with construction of municipal utility projects, according to *The Courier Journal.*

Junction City plans construction of a water line from Danville while Versailles proposes to construct a water plant. Both the projects will be financed in part with Federal funds which had been held up until the certificates were granted by the commission.

The commission already has granted several certificates to municipalities desiring to proceed with projects with PWA funds. Several more are pending.

Indications that the commission soon will be called on to settle several rate controversies were given as requests for information and blanks on which to file rate complaints were received.

Under the Public Service Commission Law enacted by the 1934 legislature, the commis-

sion has jurisdiction over rates charged by public and private utilties within the state. The commission may dismiss the protests without a hearing or, if it desires, conduct a hearing and make a decision from which an appeal may be taken to circuit court. The Commissioners receive $5,000 annually and expenses, which will be financed from assessments to be levied on public utility companies, according to *The Wall Street Journal.*

Massachusetts

Seek Lower Electric Rates

A PETITION signed by 200 customers of the Worcester Electric Light Company was presented to the state department of public utilities asking for a reduction in the electric rates of the Worcester Company, according to an item in the *Boston Evening Transcript.*

The petition charged that the present rates are unduly high and discriminatory and requested a public hearing on the matter as soon as possible after the return of the utilities commissioners from their vacations in September.

Michigan

Seek Phone Order Revision

COMPLAINING of sharply decreased revenues the Michigan Bell Telephone Company has served notice that it would seek modification of the recent order of the commission cutting the phone company's rate.

The commission's action forced the Bell company to offer its subscribers an unlimited number of calls per month at a price about one-third higher than the old system whereby phone users were charged 4 cents for each call over a certain monthly limit. The "metered service" and the "unlimited service" are now optional with the subscriber.

Detroit Public Plant Urged

ANNOUNCING his candidacy recently for the Democratic nomination for Congress from the Thirteenth District, George D. O'Brien, attorney, advocated a 70 per cent PWA loan and 30 per cent grant for the purpose of establishing a municipally owned light and power plant in the city of Detroit, according to a statement published in the *Detroit News.*

Mr. O'Brien said such an enterprise could show a profit and at the same time permit a lowering of electric rates to the consumer.

Nebraska

Rate Reduction Rejected

AN offer by the Western Public Service Company to reduce consumer electrical rates by 11.5 per cent was rejected recently by a special committee of the Scottsbluff city council because the company insisted that the city agree, at the same time, to give it a lease covering the period of the electrical franchise on a piece of property owned by the city and on which the company's power generation system is located.

City representatives, according to the *Nebraska State Journal,* insisted that rate reductions to consumers, over which a number of municipal and legal contests have been fought in the past two years, should be disposed of first and then the matter of leasing the property be considered upon its own merits.

North Carolina

No TVA Dam at Broad River

THE Tennessee Valley Authority does not expect to construct at this time a power storage dam on the French Broad river near Asheville, according to Carl A. Bock, assistant chief engineer of the Authority. Consequently, Mr. Bock stated roads and realty

improvements in that area may proceed without fear of being flooded by a TVA dam, according to *The Knoxville Journal*.

The dam there would not be economical, from a power standpoint, as compared with dams located elsewhere, he explained.

Ohio

Regulatory Changes Proposed for Utilities Commission

FOLLOWING criticism of cumbersome regulatory procedure by the public utilities commission in its recent decision in the East Ohio Gas case (see "Latest Utility Rulings" this issue), the Ohio Bar Association approved of a report of a special committee proposing a major revision of the state's utilities regulatory system, according to a recent *Associated Press* dispatch from Sandusky.

The association instructed the committee to continue with its investigation of regulatory control and report again at the midwinter session.

Among revisions of the existing regulatory system, the following were proposed:

Severing political influence from the commission by discontinuing its connection with the state department of commerce.

Making the board's operations legislative and administrative and not judicial as at present.

Permitting it to make valuations for rate-making purposes by "any lawful method."

Giving it control over the construction and operation of publicly owned plants and subjecting the latter to the same tax burdens as are imposed upon private utilities.

The committee urged that the three members of the proposed commission serve for twelve years after appointment by the governor, at a salary of $12,000 a year. No member of the commission would be permitted to campaign for public office during his incumbency or within a period of two years after he left office.

Procedure of the commission should be altered in many respects, the committee said, asserting that permitting valuations to be made by any lawful means would do away with "the long, tedious, and expensive delays incidental to valuations, and put an end to the intolerable sham battles frequently waged over the subject of valuation."

The committee urged the research department to keep the commission in touch with social and economic technical changes, and also approved the present plan of assessing the utilities for the support of the commission.

An objection was made to the committee's report by one of its members, Murray Seasongood of Cincinnati. He declared no meeting of the committee had been held and that the proposed state control of municipally owned utilities would be considered an "encroachment on home rule" by the people of Ohio.

Oklahoma

Attacks Rate Law Validity

VALIDITY of the state law prohibiting a flat service charge against natural gas consumers was attacked recently in an application for rate revision filed with the corporation commission by the Natural Gas Service Company serving Skiatook, according to *The Daily Oklahoman*.

The application, seeking upward revision of the Skiatook rate from 55 to 64 cents per thousand cubic feet, was set for hearing July 31st.

The petition pointed out that if a $1 service charge, or minimum bill, were allowed it could sell gas for 49 cents. If a service charge of $1.50 were allowed, the rate could be 42 cents.

A law passed in 1917 prohibits such minimum charges by gas companies and it was this act that was attacked as unconstitutional.

Bond Appointed to Commission

REFORD Bond recently was appointed by Governor William H. Murray a member of the corporation commission succeeding Chairman Paul A. Walker, who resigned when he became a member of the newly created Federal Communications Commission.

Some confusion exists concerning the appointee's term of office, according to the *Judicial Bulletin* issued by the Oklahoma Utilities Association. The law provides that an appointee to fill a vacancy on the commission shall serve until the next general election. This will call for an election November 6th. Confusion exists, however, since it is impossible to nominate candidates in the manner prescribed by law, and definite procedure to provide for the office after the general election in November is not yet known.

Pennsylvania

Bars Philadelphia Official in Rate Case

FOLLOWING highly controversial charges and counter-charges, the Pennsylvania commission by unanimous resolution, in which Commissioner Gruenberg alone did not participate, found S. Davis Wilson, colorful city controller of Philadelphia, guilty of "unwarranted, offensive, contemptuous, and insolent" actions and of "improper and unethical conduct."

The commission resolution denied Mr. Wilson "permission to represent parties litigant before the public service commission of the commonwealth of Pennsylvania." The resolution grew out of Mr. Wilson's conduct at a hearing before Commissioner Frederick P. Gruenberg, involving rates of the Philadelphia Electric Company.

During the hearing Mr. Wilson is reported to have stated that Commissioner Gruenberg was in a "conspiracy" and "in sympathy if not in cahoots" with the company and other utilities.

Following the commissioner's resolution barring Mr. Wilson from appearing as counsel in the rate case, Commissioner Gruenberg filed a suit for slander against Controller Wilson demanding damages in the amount of $50,000. Shortly after the attorney for Commissioner Gruenberg had filed affidavit in Common Pleas Court No. 5, Judge Robert E. Lamberton issued a capias for the arrest of the controller, fixing bail in the amount of $2,500. Mr. Wilson was reported to have accepted the capias and entered bail.

Subsequent to the filing of the damage suit, Controller Wilson reiterated vigorous criticism of the Pennsylvania commission, declaring that the division of the Philadelphia Electric Company's rates had been agreed to by the commission in advance of public hearing. He declared that the "public was without knowledge of what was going on and not represented at those meetings."

He further stated that the "agreement was made with full knowledge of Governor Gifford Pinchot."

In reply the commission on July 20th admitted that it held conferences with gas, electric, and water company executives to fix new rate schedules in advance but defended such policy in declaring that its actions had saved Pennsylvania consumers $3,000,000 a year by way of rate reduction compromises.

In a statement reported by *The Evening News* (Harrisburg), the public service commission said:

"The commission takes pride in the results obtained by these informal conferences. They sacrifice no right of the commission to institute formal proceedings nor do they prevent any person from filing a formal complaint against the new rate."

South Carolina

Duke Company Fights Loan

FOLLOWING refusal by the Public Works Administration to rescind its allocation of $2,767,000 allotment to Greenwood county for construction of a power project on the Saluda river, the Duke Power Company is to continue its fight to prevent construction of the project before the Federal Power Commission, according to *The Columbia Record*.

The Duke officials had protested the allocation before the Public Works Administration and the latter body had suspended the allotment, pending its own investigation. Following a hearing of the protest the Public Works Administration decided to lift the suspension and allow the allotment to stand as originally made.

Duke officials on July 21st notified the Federal Power Commission that it would oppose the issuance of a building permit by that body and asked for a hearing on Greenwood county's application for a permit. The Duke Company opposes the project on two grounds: infeasibility and unfair competition.

Tennessee

TVA Purchases Facilities of Tennessee Company

THE Tennessee Valley Authority has agreed to purchase the electric distribution and transmission facilities of the Tennessee Public Service Company, local power company, for $6,088,000, according to the *Associated Press*. The agreement was reached with the National Power & Light Company, owners of the local utility.

The transaction is also contingent upon the willingness of bondholders to turn in their bonds at the issue price of 96½ within three weeks. If by August 8th the company has not been able to get the bonds at this price, there is no deal, and the city of Knoxville will then proceed to make an award for a municipally operated plant, the announcement explained.

David E. Lilienthal, power director of the TVA, who conducted the negotiations, briefly outlined the agreement as follows:

The Tennessee Public Service Company will transfer to TVA all its electric distribution and transmission facilities in East Tennessee, except the transmission line between Waterville, N. C., and Kingsport, Tenn.

The Tennessee Company will arrange for a tie-in for the interchange of power between the facilities to be acquired from the local utility and Carolina company, also a national power and light company.

By the purchase of the local utility, competition between the local company and the city of Knoxville will be eliminated, and instead, the TVA and the city of Knoxville will acquire a going concern with more than 25,000 customers.

The street railway property will continue to be operated by the company.

Lilienthal said operation of the distribution facilities by TVA is specifically intended to be temporary, pending transfer to local public agencies.

The TVA purchase will result in $880,978 savings in the combined annual light and power bills of the twenty-seven towns and communities affected.

Asks Lower Water Rates

POINTING out that patrons of the municipal waterworks of Knoxville are still paying "pre-depression rates," while the plant is being operated more cheaply and at a greater profit than ever before, *The Knoxville Journal* has launched a campaign for lower water rates in that city.

The Knoxville water rates, according to the *Journal*, are the highest of those of the four largest cities of the state, exceeding the water rates of Chattanooga, in which water service is provided by a private company.

The *Journal* also pointed out that notwithstanding the fact that gas and electricity rates have been substantially reduced during the depression period, the municipal water rates have remained unchanged.

Texas

Gas Firms Appeal Rate Cuts

THE railroad commission has received appeals and accepted supersedeas bonds of two gas companies from rate reductions ordered by Waco and Cuero city councils, according to *The Austin American*.

The Texas City Gas Company, which had sought a rate increase, appealed from a reduction from 75 cents to 55 cents for 1,000 cubic feet ordered by the Waco city council. A bond of $25,000 was filed pending the appeal.

The Southwest Gas Company appealed from graduated reductions ordered by the Cuero city council. The company's maximum rate of $1 per thousand feet for the first 3,000 feet was ordered reduced to 75 cents for the first 1,000 feet.

City Plant Faces Foreclosure

THE Municipal Acceptance Corporation of Chicago, holder of the mortgage on the municipal electric plant of Seymour, has filed suit in the Dallas district court for the foreclosure on the plant, claiming a total indebtedness of $142,419.07, including principal and interest.

The plant was built by Fairbanks-Morse & Company in 1929, and operated in competition with a private utility then serving the city. The installation resulted in extensive litigation, according to *The Austin American*. Subsequent to the sales agreement, Fairbanks-Morse transferred the mortgage to the Municipal Acceptance Corporation.

PWA Finances Hydro Plant

PRELIMINARY papers toward a contract with the Federal government for completion of Hamilton hydroelectric dam in the Colorado river are being drawn, according to *The Austin American*. Allotment of a $4,500,000 public works loan for this project recently was approved by President Roosevelt and the Public Works Administration.

A private corporation will be formed as the agency to undertake the project, but with reservation that if the Texas legislature creates a public agency—a junior Tennessee Valley Authority—this public agency shall have an option to take over the project.

Virginia

PWA Approves Power Loan

DANVILLE city council has taken favorable action on a proposal to have the PWA earmark $3,000,000 for the possible development of the Pinnacles hydroelectric project in Patrick county. The city fathers have adopted a resolution authorizing Mayor Wooding to reopen the negotiations, according to *The Richmond News Leader*.

Last February citizens of Danville rejected the same proposal by a vote of 1,682 to 1,498 after the PWA had approved the loan.

Final approval has been given by the Public Works Administration to all plans for Danville's electrical expansion service program, according to the *News Leader*. Work is expected to be started on the $103,000 project soon. It is proposed to extend power lines to Elmo, Keeling, and Callands, in which communities there are numerous potential users.

Similar approval has been obtained for a proposed waterworks improvement program.

Wisconsin

Trucks Barred on Holidays

THE week-end motorist on the principal highways of central and southern Wisconsin will not be bothered with big slow-moving trucks the remainder of this summer or any summer hereafter, according to the *Associated Press*.

Through the use of extensive powers to regulate truck and bus transportation, the public service commission has decreed that no trucks weighing more than 6,000 pounds gross shall be permitted to drive on the main roads Saturdays, Sundays, and legal holidays.

Only vehicles hauling live stock and perishable milk are exempt.

The commission had in mind the safety of both the traveling and the shipping public.

It reached its decision after a traffic count showing that 24 of the main arteries are used mostly on Saturday afternoons, Sundays, and holidays.

Phone Trial Set

THREE Federal judges recently set January 7, 1935, as the date for trial of the Wisconsin Telephone Company's case against the public service commission on its one year, 12½ per cent rate reduction orders issued in 1932 and 1933, according to *The Wisconsin State Journal*. The company seeks a permanent injunction.

The trial is expected to consume more than a full month of court sessions and involves more than $2,000,000 of possible refunds to company patrons in all parts of the state.

Alvin C. Reis, commission counsel, aggressively presented the view that the 3-judge court had first to dispose of the company application for interlocutory injunction before it could take the trial of the case on its merits.

The judges suggested that it perhaps would be more practical to permit the present restraining order to continue and to attempt to speed a final trial to which the case will have to come in any event.

Decision of the court in favor of an interlocutory injunction on the first reduction order was returned by the U. S. Supreme Court with directions for findings of fact and law. The district court has not since made these nor returned them to the higher court.

In addition to its statewide case before the state public service commission and the consolidated Federal cases, the company now has before its attorneys a new 10 per cent reduction order issued recently and demanding an appeal, if any, within the next month. A reconsideration probably will be asked of the commission, according to utility counsel.

Can Stop Move to Buy Utility

ACCORDING to an informal opinion of the legal department of the public service commission, a city council has authority to discontinue proceedings to acquire a private utility started by referendum of the voters. The opinion, according to *The Wisconsin State Journal*, came as a result of a request of the secretary of Waupaca's taxpayers association.

The commission explained that by a petition of 10 per cent of the voters, a referendum can be held to reverse the council's action.

It was also pointed out that a city council does not have to wait for an appraisal before voting to discontinue, but that its vote to discontinue may be upset by action of the people at a subsequent referendum.

The Latest Utility Rulings

State Court Jury Upsets Texas Commission Rate Cut

A REDUCTION of 20 per cent in the rate charged by the Lone Star Gas Company at the gates of more than 250 Texas cities, ordered by the Texas Railroad Commission, has been held unreasonable and unjust by a Travis county district court jury.

Three days after it began deliberation, a jury of three natural gas consumers and nine nonusers held for the utility company in the second rate case tried before a jury in Texas. Trial of the case started June 11th. The state brought the suit in district court to compel the company to abide by a reduction from 40 to 32 cents per thousand cubic feet at city gates, ordered by the commission September 13, 1933. Enforcement of the order stipulating the reduced rate was enjoined in Federal court pending trial in a state court.

The company contended the proposed rate of 32 cents, based on a valuation by the state of its properties at $46,246,616, would have yielded a return of 5.37 per cent during 1932 and 5.11 per cent for the twelve months ending June 30, 1933. The company contended its properties were worth $70,000,000. The commission had set 6 per cent as the rate of return on investment allowable.

The Lone Star Gas Company is the largest in the Southwest. It operates an integrated pipe-line system of 4,000 miles, tapping 31 gas fields with 1,000 wells in Texas and Oklahoma. Distributing companies also are in the Lone Star system. *Lone Star Gas Co. v. Texas Railroad Commission.*

Cleveland Gas Rate Ordinance Sustained by Commission

THE Ohio commission on July 11th ordered the East Ohio Gas Company to refund Cleveland's 230,000 natural gas consumers about $3,500,000 of charges in excess of rates established in the city's 1931 rate ordinance. The opinion signed by all three commissioners sustained the ordinance adopted by the Cleveland council June 1, 1931, to run for a 5-year period. The ordinance provided an average reduction in retail cost of gas to Cleveland consumers of 7 cents each 1,000 cubic feet.

Among the findings in the commission's detailed opinion were:

The East Ohio Gas Company's property serving the Cleveland area was fixed at $26,212,909, as compared with the company's claim of $31,816,783.

The company's claim of $3,000,000 for going concern value was disallowed entirely.

The annual rate of return was reduced from 8 per cent to 6½ per cent.

Annual operating expenses were reduced by $1,536,974.

The detailed amounts of the items reduced were as follows: depreciation allowance $777,693 to $317,572; Federal income tax claim $362,358 to $177,187, and Ohio excise tax claim from $186,895 to $155,097.

The wholesale price of gas purchased from a West Virginia affiliate in 1931 was cut from $4,266,480, claimed by the company, to $3,787,094, which meant that the company's charge for such gas of 41.8 cents per thousand cubic feet was found excessive and reduced to 31.1 cents.

The following items argued by the East Ohio Company were disallowed as operating expenses by the commission: delay rentals, $271,004; stock plan de-

posits, $38,555; contributions to community fund, $8,107; rate case expense, $102,832.

The commission took the opportunity to comment upon the cumbersome procedure required in handling rate cases, stating:

> . . . the present method of trying rate cases must be radically changed or the whole system will break down of its own weight. . . . We believe that it is possible, by an intelligent amendment of the present laws, to greatly reduce the time and expense of rate cases. More than twenty years have demonstrated this necessity.

The commission also commented upon the duty of operating utilities to develop the cheapest source of wholesale supply available, stating in the summary to its own opinion:

> East Ohio has not exhausted all sources of supply available to it . . . has the right to go into West Virginia and purchase gas, but may not enter high-priced market so long as it has within its own fields an ample supply and make such purchase the basis of higher rates to Cleveland consumers. . . . The Affiliated Hope Company, large company operating in West Virginia, buying and producing gas, sells to nonaffiliated companies at 31.65 cents per thousand as against 41.8 charged the East Ohio Company . . . 41.8 cents charged East Ohio Company held to be unjust and unreasonable.

Although concurring in the commission's opinion, Chairman Hopple said he was dissatisfied with the commission's findings concerning the affiliate, Hope Natural Gas Company, because he felt a separate rate base should have been established, and operating revenues and expenses computed on the rate base so established. Chairman Hopple also disagreed with the "step-up" rate structure contained in the Cleveland city council's ordinance which he claimed unscientific in its operation, inasmuch as it restricts the use of large quantities of gas at prohibitive prices and is so designed to penalize consumption instead of encouraging it. The chairman referred to the record which at one point contained a comment by the attorney for the city, Newton D. Baker, who admitted that he did not believe in the "step-up" rate and was of the opinion that the state commission had the power to make a rate for the city.

Chairman Hopple also expressed some apprehension concerning the practice of the commission in refusing in any way to recognize going concern value in utility property. *Re East Ohio Gas Co. (No. 7130.)*

Tennessee Valley Authority Held to Be a Utility Subject to State Law

THE Tennessee Valley Authority is a utility under Alabama law and as such is subject to the jurisdiction of the Alabama Public Service Commission as to its intrastate business. Such is the holding of the Alabama commission in a lengthy opinion overruling the protests of coal and ice interests against approval by the commission of contracts for the interexchange of power and property between the Tennessee Valley Authority and the Alabama Power Company. The syllabus prepared by the commission in its own opinion follows:

> (1) The interveners here, Aetna Coal Company, Central Ice Company, et al., as customers of the original petitioner, Alabama Power Company, found entitled to intervene in this proceeding.
>
> (2) An original proceeding of this character should be reopened upon proper application, if the record shows sufficient cause for further exercise of the commission's jurisdiction respecting the matters involved.
>
> (3) If an agency of the Federal government comes into a state, performing both governmental and proprietary functions, it is subject to reasonable exercise of the police powers of the state over its proprietary business operations, as if an individual.
>
> (4) The Tennessee Valley Authority, under the record, found to be engaged in business in Alabama as a utility and subject to the laws of Alabama which apply to "governmental agencies" of this character.
>
> (5) The original proceeding is reconsidered and reopened for the purpose of

supplemental order now issued, which requires the Authority to file with the commission schedule of its rates and service regulations and otherwise comply with the laws of this state in its said utility operations.

(6) Petition of interveners granted to the extent stated, and overruled in all other respects.

Discussing legal decisions to the effect that governmental bodies in the performance of business enterprises in their proprietary capacity may be subjected to regulation applicable to similar business conducted by private interests, the Alabama commission stated:

> We have been unable to find any decision to the effect that these principles should not apply to the Federal government as the courts hold they must be applied to state and municipal governments. That is to say, if the Federal government comes into any of the states in the performance of its governmental functions, it is not subject to the regulations made by the state, but, if the Federal government comes into a state and enters into a proprietary enterprise, a business like that of a private individual, not governmental in character, we can find no basis on which to rest the conclusion that the Federal government in its proprietary business should not be subject to the police powers of the state. Especially is this true when the carrying on of such business by the Federal government falls clearly within a field wherein all such business is subject to the exercise of such police powers of the state in the interest of the public welfare.

The commission concluded its opinion with an order requiring the Tennessee Valley Authority to file with the state body a schedule of its rates and service tariffs in so far as they affect intrastate utility operations within the state of Alabama. *Re Alabama Power Co.* (*Docket 6604.*)

Oklahoma Commission Sustained in Lone Star Gas Case

THE Oklahoma Supreme Court has sustained a temporary gas rate reduction ordered by the Oklahoma commission early last year in rates of the Lone Star Gas Company.

The court declined to pass on the commission's valuation pointing out that the order was temporary in character and that final judgment on questions of valuation would have to be reserved until a permanent order is made and certified. The court refused to hold that the commission was in error in refusing to base its valuation on cost of reproduction. On the other hand, it held that the commission's action in using distress "labor prices" is improper. The commission was directed upon final consideration of the value of the property to avoid "extremes or conditions brought about by abnormalities."

The company had attacked the power of the commission to order that a 10-cent reduction in the city gate rate be passed on entirely to the consumers at the "burner tips." The court declined to say definitely whether in every instance a reduction in a city gate rate results in a saving by the full amount of the reduction to the distributing company, but upheld the commission's requirement in the particular case at bar by again pointing to the temporary character of the order and refusal of the parties to present evidence as to the reasonableness of the existing rate.

The court upheld the right of the commission to investigate the reasonableness of fees paid to affiliated corporations for managerial and other services, charged to operating expenses, and stated:

> The hands of the state's rate-making body and the state's courts are not to be tied by artificial barriers set up in the form of holding companies, organized and kept elsewhere, which seek to reap the benefits or profits earned under rates established for public service companies in Oklahoma and at the same time deny the state's rate-making body and the state's courts the information which they deem necessary to the determination of proper, permanent rates.

Lone Star Gas Co. v. Oklahoma Corporation Commission.

Antiutility Rate Agreements Subject to Public Examination

THE Pennsylvania commission has decided definitely that contracts for interexchange of gas between utilities must be made available for public examination just as rate contracts or any other type of service. The decision came as the result of an investigation by the commission into the reasons why the Harrisburg Gas Company did not file as a tariff, under General Order No. 33 of the commission, a copy of a contract with the Lebanon Valley Gas Company providing, among other things, for the sale of gas by the former to the latter at wholesale rates for resale to ultimate consumers.

The commission ruled that transactions between public utility companies whereby one utility sells its service to another or to a municipality should be given the same publicity through the filing of tariffs with the commission as must be given to tariffs providing for rates to be charged by utility companies to individual consumers. The commission pointed out that it had statutory authority under Art. II, § 1, of the Public Service Company Law, to issue a general order requiring all utility companies to place on file tariffs governing terms of agreements as to wholesale utility supply between utility companies or between a utility company and a municipality.

In reply to the contention that the wholesale service was rendered by the utility beyond the service boundary authorized by its charter as a utility, the commission stated that where a public utility company undertakes to furnish service outside of its chartered territory, it is still rendering a public service regardless of whether the operation is permissible or obligatory under its charter, and under such circumstances the utility is deemed to have assumed duties towards the public which necessarily follow the undertaking of a public service. *Pennsylvania Public Service Commission v. Harrisburg Gas Co. et al.* (*Complaint Docket Nos. 9927, 9928 et al.*)

City Held Liable for Utility Bill under "Clean Hands" Doctrine

FOR more than twenty years the Kentucky Utilities Company has furnished electric service to the city of Middlesboro, Kentucky, and its inhabitants. In 1932 the city owed the company for electric, as well as water service, $10,833.61, for which the city executed its note, no part of which has ever been paid. The city was warned by the company that failure to make a payment of such liability would be followed by discontinuance of service. The utility sued the city to recover the indebtedness.

In 1931 it had been discovered that the company had no franchise to operate in the city of Middlesboro. Subsequently the city sued the utility for the use of its streets, because of the unauthorized operations without a franchise and also to enjoin the utility from discontniuing service as it had threatened to do. The city defended the contention for alleged past indebtedness, claiming that the indebtedness was illegally incurred and that it exceeded the constitutional limitations of the city's indebtedness because the city had no franchise to furnish the service, and as a result the indebtedness was illegally incurred.

The court pointed out that the city by its suit was undertaking to compel the utility to furnish service under the very conditions which it claimed were illegal. The court pointed out that the city could not claim that the utility had no valid contract under which it could furnish service to the city so as to escape paying past due indebtedness and